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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1902.

No. 220 77.

WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION), PETITIONER,

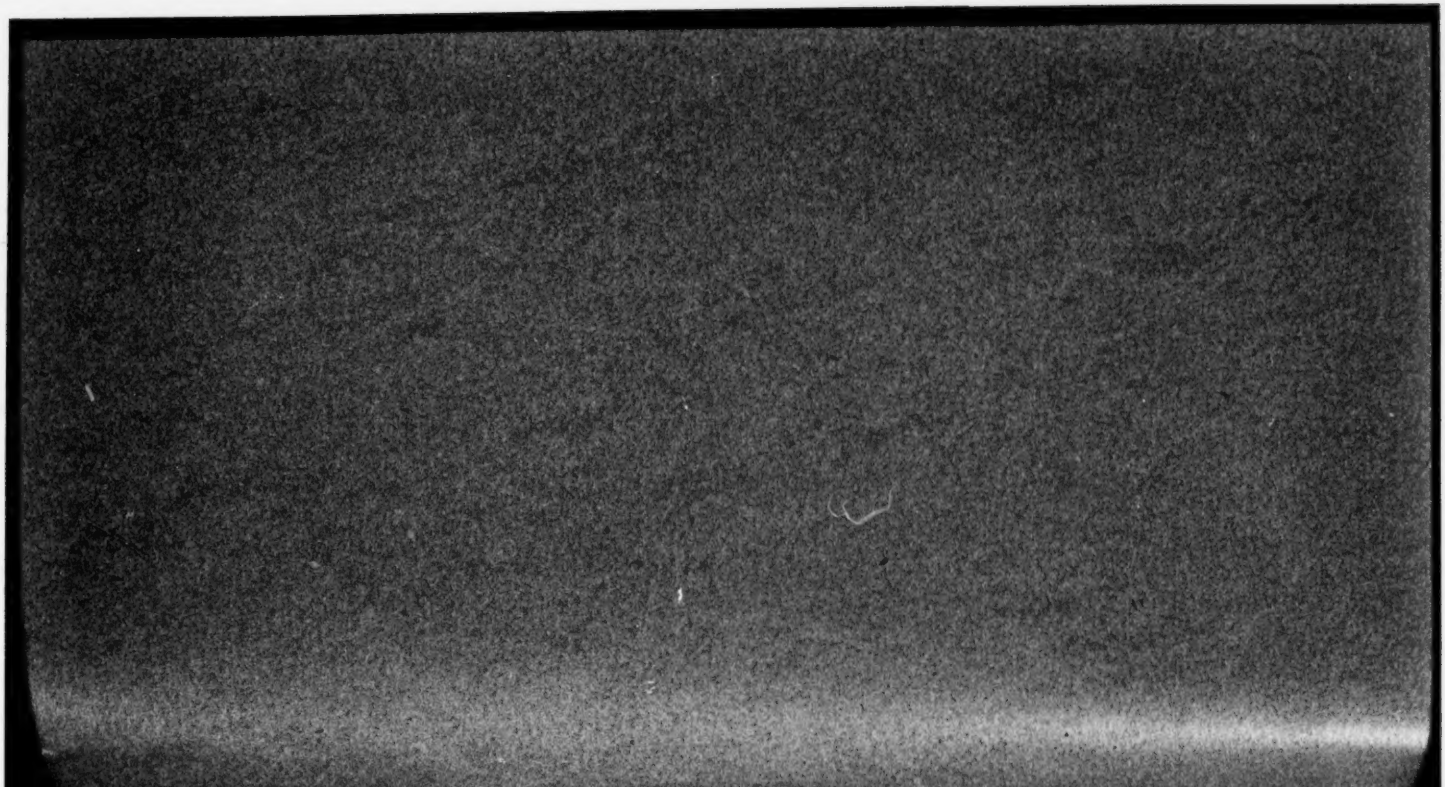
vs.

EDWARD P. ALLINSON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 5, 1902.
CERTIORARI AND RETURN FILED MAY 21, 1902.

(18,196.)



(18,106.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 290.

WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION), PETITIONER,

vs.

EDWARD P. ALLINSON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from the circuit court of the United States for the eastern district of Pennsylvania	1	1
Docket entries	1	2
Caption	2	3
Subpœna	3	3
Bill of complaint	7	6
Exhibit A—Record from district court, county of Hennepin, State of Minnesota	19	14
Summons	21	17
Amended complaint	24	20
Exhibit A—Articles of incorporation of Northwestern Guaranty Loan Company	41	34
Exhibit B—Petition of Goodnow and Lawther	43	37

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 12, 1901.

	Original.	Print
Findings of fact	50	43
Conclusions of law	58	50
Findings of fact	59	52
Conclusions of law	60	53
Schedule A—Names of creditors, &c	63	55
Bond of receiver	95	79
Judgment and decree	101	84
Schedule A—Names of creditors, &c	104	88
Clerk's certificate	117	97
Judge's certificate	117	98
Clerk's certificate	118	98
Demurrer of Philadelphia Trust and Safe Deposit Company, trustee	119	99
Demurrer of John Converse *et al*	122	101
Henry Haines	125	104
Mary K. Perot	127	106
Joseph M. Gazzam	129	108
J. Bertram Lippincott	132	110
Joinder of issue	134	113
Bond for costs	135	114
Argued on demurrers	137	115
Opinion	136	115
Decree	141	120
Petition for appeal and allowance	142	120
Assignments of error	144	122
Bond surappeal	146	124
Citation	149	126
Clerk's certificate	150	127
Order taking cause under advisement	151	127
Opinion	151	128
Judgment	153	129
Order to issue mandate	154	130
Mandate	154	130
Clerk's certificate	156	131
Writ of certiorari	158	132
Stipulation as to return to writ of certiorari	161	133
Clerk's certificate and return to writ of certiorari	163	133

a Original.

Transcript of Record.

United States Circuit Court of Appeals for the Third Circuit, September Term, 1900.

ARTHUR R. ROGERS and W. E. HALE, Receivers for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Appellants.

vs.

EDWARD P. ALLINSON. } No. —.

Appeal from the circuit court of the United States for the eastern district of Pennsylvania.

Filed July 31, 1900.

1 October session, 1898.

Charles C. Lister, M. H. Boutelle.

Byerly Hart, for J. B. Lippincott.

J. Campbell Lancaster, for Henry Haines.

J. G. Johnson, for Penna. Co., trustee of Mary A. Guzzam.

Townsend, Elliott & Townsend, for the Phila. Trust Co.

Wm. S. Wallace, for Jos. M. Gazzam.

A. B. Weimer, W. C. Rodman, & J. G. Johnson, for sundry def'ts.

ARTHUR R. ROGERS and W. E. HALE, as Receiver- for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company,

vs.

EDWARD P. ALLINSON, GERTRUDE ALLISON, Willis R. Armstrong, William Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emiline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Shaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurance on Lives and Granting Annuities (a Corporation), Trustee for Mary A. Gazzam, and The Philadelphia Trust, Safe Deposit and Insurance Company (a Corporation), Trustee for Mary A. Gazzam. } 26.

Nov. 22, 1898.—Bill in equity filed.
Subpœna issued returnable first Monday of January next.
Dec. 19, 1898.—B. Hart, Esq., appears for J. B. Lippincott.
Dec. 20, 1898.—J. C. Lancaster, Esq., appears for Henry Haines.
Dec. 28, 1898.—J. G. Johnson, Esq., appears for Penna. Co., trustee for Mary A. Gazzam.
Dec. 29, 1898.—Townsend, Elliott & Townsend appear for the Phila. Trust Co., trustee.
Jan'y 2, 1899.—W. S. Wallace, Esq., appears for Jos. M. Gazzam.
Jan'y 2, 1899.—Subpœna returned served as to certain defendants and "*mortuous est*" and "*nihil habet*" as to others (see return attached to writ on file).
2 Jan'y 4, 1899.—A. B. Weimer, Esq., W. C. Rodman, Esq., and John G. Johnson, Esq., appear for E. P. Allinson, W. R. Armstrong, W. Burnham, George Burnham, Jr., John H. Converse, James M. Crowell, S. A. Hendrickson, R. Koradi, G. A. Morse, E. F. Morse, A. J. Richardson, A. Rodman, W. C. Rodman, W. R. Schaefer, C. J. Shoemaker, A. B. Weimer, S. W. Wray, C. F. Wignall, defendants.
Feb'y 9, 1899.—Demurrer of the Phila. Trust Co., trustee, filed.
Feb'y 15, 1899.—Demurrer of John H. Converse, William Burnham, George Burnham, Jr., James M. Crowell, Charles M. Swain, E. P. Allinson, W. R. Armstrong, S. A. Hendrickson, Rudolph Koradi, Edwin F. Morse, George A. Morse, Walter C. Rodman, A. J. Richardson, Abigail Rodman, Walter R. Schaefer, Charles J. Shoemaker, Albert B. Weimer, Charles F. Wignall and Samuel W. Wray, filed.
Feb'y 15, 1899.—Demurrer of Henry Haines, filed.
Feb'y 18, 1899.—Demurrer of Mary K. Perot, filed.
Feb'y 23, 1899.—Demurrer of Joseph M. Gazzam, filed.
Feb'y 24, 1899.—Demurrer of J. B. Lippincott, filed.
Jan'y 19, 1900.—Replication filed.
April 11, 1900.—Bond for costs filed.
April 23, 1900.—Argued surdemurrers.
June 11, 1900.—Opinion sustaining demurrer.
July 26, 1900.—Decree dismissing bill.
July 26, 1900.—Petition for appeal filed and allowed.
July 26, 1900.—Assignments of error filed.
July 26, 1900.—Citation allowed and issued.
July 26, 1900.—Bond surappeal approved and filed.
July 27, 1900.—Citation returned service accepted.

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

ARTHUR R. ROGERS ET AL.
vs.
EDWARD P. ALLINSON ET AL.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *ss:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district
3 of Pennsylvania, in the third circuit, of October session, 1898, No. 26.

It is thus contained:

Be it remembered that on the 22nd day of November, 1898, the complainants, by their counsel, come into our court here and file their bill of complaint against the respondents, which being read is in the words and figures following, to wit:

UNITED STATES,
Eastern District of Pennsylvania, } *sct:*

The President of the United States to Edward P. Allison, Gertrude Allison, Willis R. Armstrong, William Burnham, George Burnham, Jr., Isabel H. Charlton, Ellis Clark, John H. Converse, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emiline F. Godfrey, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, A. J. Richardson, Abigail Rodman, Walter C. Rodman, J. Bunford Samuel, Walter R. Shaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel M. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, all of Philadelphia, in the State of Pennsylvania, and all citizens of the State of Pennsylvania, and the Philadelphia Trust, Safe Deposit and Insurance Company of Philadelphia, in the State of Pennsylvania, trustee for Mary A. Gazzam, a corporation organized under the laws of Pennsylvania and a citizen of the State of Pennsylvania, and the Pennsylvania Company for Insurance on Lives and Granting Annuities, of Philadelphia, in the State of Pennsylvania, trustee for Mary A. Gazzam, a corporation duly created under the laws of the State of Pennsylvania and a citizen of the State of Pennsylvania, and Silas Carey, George W. Cornell, and Edward H. Gourley, all of Newton, in the State of Pennsylvania, and all citizens of the State of Pennsylvania:

For certain causes offered before the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, we command and strictly enjoin you, and each of you, that

laying all other matters aside and notwithstanding any excuse, you and each of you personally be and appear before the judges of the said court, at a session of the same court, to be holden at Philadelphia, on the first Monday of January next, to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said court shall have considered in this behalf. And have you then and there this
4 writ. And this you are in nowise to omit, under the penalty of four hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 22d day of November, 1898, and in the 123rd year of the Independence of the said United States.

SAMUEL BELL,
Clerk of Circuit Court, United States,
Per BRODBECK.

NOTE.—The defendants in this case are required to enter their appearance in the clerk's office of said court, on or before the first Monday of January next, otherwise the bill may be taken *pro confesso.*

Endorsed: I accept service of the within subpœna for the defendant, J. Bertram Lippincott. December 6, 1898. Byerly Hart, attorney for J. Bertram Lippincott. J. McGregor Gibb, for self.

We hereby accept service of the within subpœna for the Philadelphia Trust, Safe Deposit and Insurance Company, trustee for Mary A. Gazzam.

TOWNSEND, ELLIOTT & TOWNSEND,
Attorneys for the Philadelphia Trust, Safe Deposit and Insurance Company, Trustee for Mary A. Gazzam.

December 7, 1898.

I hereby accept service of within subpœna for Henry Haines.

J. CAMPBELL LANCASTER,
Attorney for Henry Haines.

December 12, 1898.

We hereby accept service of the within subpœna on behalf of Mary K. Perot.

December 21, 1898.

JOSEPH T. BUNTING.
WILLIAM C. HANNIS.

I hereby accept service of the within writ for Joseph M. Gazzam.
December 23, 1898.

W. S. WALLACE.

December 27, 1898, at Philadelphia, in my district, served the within writ on Willis R. Armstrong, Edward P. Allison, James M. Crowell, Rudolph Koradi, Edwin F. Morse, George A. Morse, Walter

C. Rodman, A. G. Richardson, Walter R. Shaefer, Charles J.
5&6 Shoemaker, Albert B. Weimer, Charles F. Wignall, Charles M. Swain, William Burnham, George Burnham, Jr., Stephen W. Dana, Abigail Rodman.

December 28th, 1898, on Samuel A. Hendrickson and Samuel W. Wray by giving to each of them respectively a true and attested copy thereof and making known the contents of the same.

Also, on December 27, 1898, on John H. Converse by leaving a true and attested copy thereof at his residence with an adult member of his family, to wit, Delia Hogan.

Also, on December 27, 1898, on the Pennsylvania Company for Insurance on Lives and Granting Annuities, trustee for Mary A. Gazzam, by giving a true and attested copy thereof to Charles Packard, treasurer of said company, and making known the contents of the same; *mortuos est* as to William Hacker, and *nihil habet* as to Gertrude Allison, Isabel H. Charlton, Silas Carey, Ellis Clarke, George W. Connell, Henry D. Gregory, Emiline F. Godfrey, Edward H. Gourley, Emma E. Haman, Ernst Heitz, G. Bumford Samuel, Melanie M. Stussy, Richard Tull, Charles W. West, Florence Wilson, Edward G. West.

So answers

JAMES B. REILLY,
United States Marshal,
Per ABRAM B. MYERS, *Deputy.*

Endorsed: No. 26. Circuit court, October session, 1898. W. E. Hale, receiver, *et al. vs.* Edward P. Allison *et al.* Subpœna in equity. Returnable on the first Monday of January next. Charles C. Lister, M. H. Boutelle, solicitors for complainant. Filed Jan 2, 1898. Samuel Bell, clerk, per G. B. Jr.

7 In the United States Circuit Court for the Eastern District of Pennsylvania. In Equity.

ARTHUR R. ROGERS and W. E. HALE, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Complainants,

vs.

EDWARD P. ALLISON, GERTRUDE ALLISON, WILLIS R. ARMSTRONG, William Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emiline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Shaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurance on Lives and Granting Annuities (a Corporation), Trustee for Mary A. Gazzam, and The Philadelphia Trust, Safe Deposit and Insurance Company (a Corporation), Trustee for Mary A. Gazzam, Defendants.

To the honorable the judges of the United States circuit court in and for the eastern district of Pennsylvania:

Your orators, Arthur R. Rogers and W. E. Hale, as receiver for the collection and enforcement of the liability of stockholders
8 of the Northwestern Guaranty Loan Company, both of whom are citizens of the State of Minnesota, brings this their bill against Edward P. Allison, Gertrude Allison, Willis R Armstrong, William Burnham, George Burnham, Jr., Isabel H. Charlton, Ellis Clark, John H. Converse, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emiline F. Godfrey, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, A. J. Richardson, Abigail Rodman, Walter C. Rodman, J. Bunford Samuel, Walter R. Shaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, all of Philadelphia, in the State of Pennsylvania, and all citizens of the State of Pennsylvania, and the Philadelphia Trust, Safe Deposit and Insurance Company, of Philadelphia, in the State of Pennsylvania, trustee for Mary A. Gazzam, a corporation organized under the laws of the State of Pennsylvania and a citizen of the State of Pennsylvania, and the Pennsylvania Company for Insurance on Lives and Granting Annuities, of Philadelphia, in the State of Pennsylvania, trustee for Mary A.

Gazzam, a corporation duly created under the laws of the State of Pennsylvania, and a citizen of the State of Pennsylvania, and Silas Carey, George W. Cornell and Edward H. Gourley, all of Newton, in the State of Pennsylvania and all citizens of the State of Pennsylvania, and thereupon your orators complain and allege:

I.

That at all times hereinafter mentioned each of your orators was and at the commencement hereof is a resident and citizen of the State of Minnesota, that all and several the defendants herein are at the commencement hereof, respectively, citizens of the State of Pennsylvania and residents of the eastern district of said State.

That the Pennsylvania Company for Insurance on Lives and Granting Annuities was, during all the times hereinafter mentioned, and still is, a corporation, duly created, organized and existing under and by virtue of the laws of the State of Pennsylvania, having its principal place of business in the city of Philadelphia, in said State.

That the Philadelphia Trust, Safe Deposit and Insurance Company was, during all the times hereinafter mentioned, and
9 still is, a corporation, duly created, organized and existing under and by virtue of the laws of the State of Pennsylvania, having its principal place of business in the city of Philadelphia, in said State.

That the amount herein in controversy, exclusive of interest and costs, exceeds the sum and value of two thousand dollars ($2,000).

II.

Further complaining your orators show and state to the court that the Northwestern Guaranty Loan Company hereinafter mentioned was, on or about the first day of May, 1884, duly incorporated under the general laws of the State of Minnesota, to wit: title 2, chapter 34, General Statutes of Minnesota, 1878.

That the general nature of its corporate business consisted in the buying, selling, negotiating and guaranteeing of notes, bonds, debentures, mortgages and other securities and choses in action;

That the capital stock of said corporation issued and outstanding during all the times hereinafter mentioned, consisted of twelve thousand five hundred shares of the par value of one hundred dollars per share;

That the principal place of business of said corporation provided by its articles of incorporation, was the city of Minneapolis, Hennepin county, Minnesota, whereat from the date of incorporation aforesaid and down to the twentieth day of May, 1893, it continued in the general conduct of its said corporate business.

III.

That on the twentieth day of May, 1893, in proceedings theretofore instituted by creditors and against said corporation in the district court of said Hennepin county, Minnesota, said court being

possessed of due jurisdiction in the premises, said Northwestern Guaranty Loan Company was duly adjudged insolvent, and a receiver appointed of all and several its corporate assets under and as provided by the general insolvency laws of said State, to wit: chapter 148, Gen. Laws Minnesota, 1881, and the acts amendatory thereof.

That thereupon and on said date last mentioned said receiver duly qualified and took possession of the assets of said corporation.

That since the date of said adjudication said Guaranty Loan Company has not had or conducted any business or had or received any assets or properties whatsoever, and is not at the commencement hereof possessed of any properties or assets.

10

IV.

That during the conduct of the said corporate business and on and prior to the twentieth day of May, 1893, the said Northwestern Guaranty Loan Company, under and pursuant to and in the exercise of the powers as such in it vested by its said articles of incorporation, and the laws of said State of Minnesota thereto appertaining, contracted sundry indebtedness to divers persons and bodies corporate, which said indebtedness aggregated, on said twentieth day of May, 1893, upwards of three million dollars, all whereof was evidenced by debentures, guaranteed notes and obligations and other certificates of indebtedness issued in the regular course of business, as aforesaid, and all whereof, on said last-mentioned date, constituted legal, valid and subsisting indebtedness against said corporations.

V.

That under and by virtue of the constitution and general laws of said State of Minnesota, pursuant to which said Northwestern Guaranty Loan Company was incorporated, each and every of the stockholders therein assumed personal and contractual liability for the indebtedness of said corporation to the amount of the par value of their several holdings of stock. That the liability thus assumed was to and for the equal and common benefit of the corporate creditors and to be enforced in proceedings as indicated by the general statutes of that State, to wit: sections 5905 to 5911 inclusive, General Statutes of Minnesota, 1894, and the decisions of the courts of that State interpreting the same.

VI.

That on or about November 1, 1893, and subsequent to the adjudication of insolvency aforesaid, your orator, Arthur R. Rogers, having theretofore duly recovered and docketed judgment against said Northwestern Guaranty Loan Company in the district court of said Hennepin county, Minnesota, and having had duly issued and returned wholly unsatisfied an execution upon such judgment, duly caused to be filed in said district court a bill in equity in behalf of himself and all other creditors of said Northwestern Guaranty Loan Company, against that company and all and several the stockhold-

ers thereof for the purpose of enforcing the aforesaid liability of such stockholders, and to that end amongst others for an accounting of the debts and assets of said corporation; the ascertainment of the deficiency; the apportionment and assessment of such deficiency
11 amongst the several stockholders; and for the appointment of a receiver for the purpose of enforcing and collecting such assessment or ascertained liability all and several, in accordance with and as provided by the laws aforementioned, and as more fully appear in the exemplification of the proceedings in said cause attached to and made part of this bill and hereinafter specifically referred to.

VII.

That the said Northwestern Guaranty Loan Company and all and several the stockholders thereof were made parties to said bill, and process in said cause was duly served on said corporation and all and several the stockholders thereof residing within the State of Minnesota.

VIII.

That thereafter such proceedings were duly had in said pending cause last aforesaid, that the same was regularly brought on for hearing before said district court of Hennepin county, Minnesota, and on or about the eighth day of February, 1897, a final order and decree was by said court duly rendered and entered in favor of your orator, Arthur R. Rogers, and all and several the creditors of said corporation, and against the defendants therein, adjudging and decreeing as follows, to wit:

First. The several sums due and owing to your orator and the said several creditors by the defendant Northwestern Guaranty Loan Company, which said indebtedness, as therein adjudged and decreed, aggregated $3,307,394.34, for which said several sums judgments were duly rendered and entered in favor of said several creditors, including your orator, Arthur R. Rogers, and against said Northwestern Guaranty Loan Company.

Second. That the value of the total assets and properties of said Northwestern Guaranty Loan Company, all and several whereof were impounded in the receivership aforesaid, was four hundred and fifty thousand ($450,000) dollars, and no more.

Third. That the total capital stock issued by said Northwestern Guaranty Loan Company, all of which said stock was issued and outstanding at the time of the contracting of the said indebtedness and the date of adjudication of the insolvency of said Northwestern Guaranty Loan Company, to wit, May 20, 1893, was twelve thousand five hundred (12,500) shares of the par value of one hundred ($100) dollars per share.

Fourth. The names of the several stockholders and the amount of stock held by each.

12 Fifth. That each of the stockholders was liable upon such stock to contribute for the common benefit of said creditors an amount equal to the par value of the stock held by him.

Sixth. That accordingly each and every of the stockholders de-

fendants, within said State of Minnesota, be adjudged to pay and contribute a sum equal to the par value of the stock held by such stockholder, which said judgments so rendered against said several Minnesota stockholders, aggregated seventy thousand and two hundred ($70,200) dollars.

Seventh. That W. E. Hale be appointed receiver for collecting and enforcing, for and in behalf of all said several creditors, the judgments against such Minnesota stockholders, and for the purpose of collection, by such proceedings as might be proper, the ascertained liability of non-resident stockholders of said Northwestern Guaranty Loan Company, over whom the court, by reason of non-residence, had not acquired jurisdiction for purpose of rendering personal judgment.

Eighth. That said funds, so collected, be held by said receiver for the purpose of equal and *pro rata* distribution amongst said creditors and subject to the further order of the court.

Ninth. That the court retain jurisdiction of said cause, for the purpose of making such other and further orders and decrees in the matter of distribution or otherwise as might be necessary to protect the rights of the several parties in the premises.

IX.

That an exemplification of the record and decree in said cause last hereinbefore referred to is attached to this bill marked Exhibit "A" and hereby referred to and made part of the allegations hereof.

X.

That your orator, Arthur R. Rogers, was as hereinbefore stated the original creditor in said cause and during all and several the periods covered by the litigation therein mentioned, had and exercised as such original creditor control of said several proceedings for himself and in behalf of all and several the creditors thereto.

That your orator, W. E. Hale, was by the terms of the said decree as hereinbefore alleged, appointed and designated by said court as receiver for the collection and enforcement of the therein ascertained liability of stockholders of the Northwestern Guar-
13 anty Loan Company, and as more fully appears from the decree therein hereinbefore recited and referred to, directed as such to take all necessary and proper steps by suit or otherwise against non-resident stockholders over whom the court by reason of such non-residence failed to acquire jurisdiction to render personal judgments, and that prior to the commencement hereof, your orator, W. E. Hale, duly qualified as such receiver and is now the duly appointed and acting receiver for the purposes and with the powers conferred by such decree.

XI.

Further complaining, your orators allege and aver that the defendants herein were at the date of the adjudication of insolvency of said Northwestern Guaranty Loan Company, ever since have been and still are stockholders therein, owning and holding during all

said times and at the commencement hereof the number of shares and of the par value as set opposite their respective names, to wit:

Name.	Number of shares.	Amounts.
Edward P. Allison	15	$1,500
Gertrude Allison	25	2,500
Willis R. Armstrong	15	1,500
William Burnham	20	2,000
George Burnham, Jr.	20	2,000
Isabel H. Charlton	4	400
Silas Carey	10	1,000
Ellis Clark	8	800
John H. Converse	65	6,500
George W. Cornell	10	1,000
James M. Crowell	30	3,000
S. W. Dana	14	1,400
Joseph M. Gazzam	50	5,000
Henry D. Gregory	15	1,500
J. McGregor Gibb	50	5,000
Emiline F. Godfrey	3	300
Edward H. Gourley	4	400
Emma E. Haman	3	300
William Hacker	25	2,500
Henry Haines	10	1,000
Samuel A. Hendrickson	50	5,000
Ernst Hitz	1	100
Rudolph Koradi	2	200
J. Bertram Lippincott	20	2,000
Edwin F. Morse	20	2,000
14 George A. Morse	7	700
Charles P. Perot	12	1,200
Mary K. Perot	5	500
Walter C. Rodman	39	3,900
A. J. Richardson	20	2,000
Abigail Rodman	3	300
J. Bunford Samuel	20	2,000
Walter R. Shaefer	2	200
Charles M. Swain	10	1,000
Charles J. Shoemaker	1	100
Melanie M. Stussy	9	900
Richard Tull	3	300
Samuel W. Wray	20	2,000
Charles W. West	20	2,000
Edward G. West	20	2,000
Albert B. Weimer	1	100
Charles F. Wignall	5	500
Alpheus Wilt	20	2,000
Mary Wilt	20	2,000
Florence Wilson	10	1,000

Pennsylvania Company for Insurance on Lives and Granting Annuities, a corporation, trustee for Mary A. Gazzam	50	5,000
The Philadelphia Trust, Safe Deposit and Insurance Company, a corporation, trustee for Mary A. Gazzam	50	5,000

That each of said several parties was named as a party defendant in the cause hereinbefore mentioned.

That in and by the terms of the decree therein as aforesaid it was found and determined that they severally held as of the date of said adjudication of insolvency the number of shares and of the par value respectively as last above set forth and enumerated, all as will more fully appear from the record of said decree hereto attached and hereinbefore referred to.

That said defendants are, as your orators are informed and believe, all of the stockholders of said Northwestern Guaranty Loan and Trust Company residing within the Commonwealth of Pennsylvania or within the jurisdiction of the courts thereof.

15 XII.

That the aggregate, valid, and subsisting indebtedness of said corporation as of the date of its adjudication of insolvency was, and still is upwards of three million dollars, all whereof is held by your orator, Arthur R. Rogers, and various other creditors as aforesaid, and all whereof is still due and unpaid, and unsecured, except as herein and in this bill stated; that the total aggregate of corporate properties and assets did not at the date of said adjudication of insolvency, and does not now, exceed four hundred and fifty thousand dollars, and that under the laws of the State of Minnesota, hereinbefore mentioned, each and every stockholder therein is liable to pay and contribute for the equal benefit of the creditors thereof a sum equal to the par value of his stock.

XIII.

That the cause hereinbefore referred to was brought for the enforcement of the stockholders' liability aforesaid, and the corporation and each and every stockholder therein including the defendants herein made parties defendant thereto and afforded due opportunity of appearing and contesting as he might be advised.

XIV.

That all and several the defendants herein were during all and several the times hereinbefore alleged and still are non-residents of said State of Minnesota, and that by reason of such non-residence, no one of said defendants was or could have been served with process in the said action brought to enforce the liability of stockholders, and that no one thereof entered an appearance therein, or has paid or contributed the amount or any part thereof due by reason of the facts hereinbefore stated.

XV.

Your orators further aver that the decree hereinbefore recited ascertaining the necessity for and amount to which stockholders should contribute as conclusive in that regard on all stockholders of said corporation; that said decree cannot be executed without and beyond the limits of the jurisdiction of the State of Minnesota without the aid and interposition of equity in enforcing said decree in or by ancillary proceedings; that the several defendant stockholders herein are liable to contribute to a fund on behalf of the creditors of said corporation in amounts equal to the par value of their respective holdings of stock as hereinbefore alleged.

16 In consideration whereof and forasmuch as the creditors of said corporation are remediless in the premises by the rules of the common law, your orator, Arthur R. Rogers, one of said judgment creditors and a party to the decree aforesaid, and W. E. Hale, as receiver as and for the purposes provided by said decree and hereinbefore alleged, bring this bill for the equal benefit of all the said creditors of said Northwestern Guaranty Loan Company and against the defendants herein as stockholders of that company to the end that said defendants and each of them may, if they can show cause why they and each thereof should not be adjudged liable to pay and contribute to the extent of the par value of their several holdings of stock for the equal benefit of the creditors of said corporation, and that said defendants may make to all and several the foregoing allegations (but not under oath, answer under oath being hereby waived) according to the best of their knowledge, information and belief as though specially interrogated on each; and that your orators may have all such orders, decrees and process as may be necessary to enforce the payment of said sums, and this honorable court will take jurisdiction of this ancillary bill, and grant such other and further relief as the nature and circumstances of the case may require and as may be meet and consonant with the equities of the case and seem proper to this honorable court.

May it please your honors to grant unto the complainants a writ of subpœna, to be directed to the said Edward P. Allison, Gertrude Allison, Willis R. Armstrong, William Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emiline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Shaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurance on Lives and Granting Annuities (a corporation), trustee for Mary A. Gazzam, and the Philadelphia Trust, Safe Deposit and Insurance Company (a corporation),

trustee for Mary A. Gazzam, in this bill named, thereby commanding them on a certain day, and under certain penalties therein expressed, personally to appear before this honorable court, and
17 & 18 then and there full, true, direct and perfect answers make to all and singular the premises; and further, to stand to, perform and abide such further orders, directions and decrees therein as to this honorable court shall seem meet.

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19 STATE OF MINNESOTA, }
County of Hennepin, }

District Court, Fourth Judicial District.

ARTHUR R. ROGERS, Plaintiff,

vs.

MINNEAPOLIS TRUST COMPANY, as Receiver of the Northwestern Guaranty Loan Company; Louis F. Menage, Edwin A. Norton; Louis F. Menage and William S. Streeter, Trustees; W. S. Streeter; J. M. Addeman, Trustee; Walter C. Rodman, Montana Trust Company, H. C. Hardon, Geo. Kiernan, H. W. Allen, Cyrus J. Anderson, Loren C. Ayer, William F. Andrews, Elizabeth A. Allen, Geo. E. Ashley, F. E. Alfred, Ella J. Ackley, D. R. Allison, W. S. Allis, E. L. Ainsley, Edward P. Allison, Gertrude Allison, L. F. Aldrich, Willis R. Armstrong, Lewis W. Anthony, C. H. Austin, W. H. Blaisdell, Addie P. Baker, C. H. Bailey, George Brainerd, Geo. P. Blair, Nettie A. Bassett, E. Baldwin, H. T. Baldwin, Ellen Baldwin, B. M. Braley, A. P. Braley, Henry Ballard, F. W. Ballard, Geo. H. Bartlett, Adeline W. Batchelder, Lydia R. Bartlett, E. C. Blanchard, George H. Bartlett, Cornelia W. Ball, Elizabeth V. Bailey; E. W. Baxter, Estate of William Breck; K. A. Benedict, Ben. S. Benton, Lauraette Bingham, William R. Bridges, Addie I. Bibber, Reed B. Bontecon, W. A. Brooks, James W. Brock, Alson Brown, Fred A. Brown, Elizabeth J. Brown, Samuel N. Brown, A. A. Brooks, William Burnham, Fannie E. Buckminster, Gates B. Bullard, Albert F. Burdett, Geo. Burnham, Jr., Joseph A. Budlong, Geo. A. Buffum, Frank H. Clark; The Capital Fire Insurance Company of Concord, N. H.; Mary E. Carpenter, Harvey Carpenter, S. E. Caswell, Frank B. Carr, Maria P. Clark, William H. Clark, Isabel H. Charlton, James Clark, Helen M. Clark, F. R. Chase, James Caird, James H. Carpenter, H. Maria Capron, Albert E. Calder, Silas Carey, James E. Case, Ellis Clark, William P. Chamberlain, Mary E. Carpenter, E. A. Chittenden, W. A. Childs, Daniel Coffrin, Ellis M. Coe, Charles Cobb, John H. Converse, David Coe, A. A. Coe, Charles H. Cross, L. Bart Crose, Ira Colby, F. H. Colby, William H. Cook, William G. Crocker, Hezekiah Conant, N. Stanton Coffin, Elizabeth M. Colt, Geo. W. Cornell, James M. Crowell, Mrs. R. K. Leverett Cushman, Henry L. Cushman, J. Jay Dana, S. W. Dana, Elmer A. Darling, A. B. Darling, Wilbur P. Davis, William L. Damon, Edwin Davis, Carrie L.

Dean, Alfred J. Dean, Jane V. Delano, John W. Dean, W. S. Dewey, J. J. Dewey, D. C. Denison, Elizabeth Dean, William E. Dean, Fred W. Dean, George F. Dean, J. E. Dickerman, J. E. Dwinnell, Lucy F. Dillaway, Clara E. Dickson, William M. Dickson, John C. Dickson, H. L. Dickerman, Walter Dole, O. G. Dort, Oliver H. Durrell, Sophia G. Durrell; Geo. B. Davis and Phil T. Walker, Executors; J. L. Edwards, Nancy J. Elms, Jacob Edwards; W. T. Emerson, Guardian; Estate of Stephen Emigh, Thomas Fairbrother, Mrs. William P. Fairbanks, Edward T. Fairbanks, William P. Fairbanks, Francis A. Fales, Mrs. O. F. Fassett, Amasa Fairbrother, Myron Fairbrother, Freewill Baptist Printing Establishment, The Freewill Baptist Education Society; Loren Fletcher and Charles M. Loring, as Partners as L. Fletcher & Co.; Anna T. Fernald; E. N. Fernald, Guardian; The Freewill Baptist Foreign Miss. Society, A. Clark Fellows; Eustace W. Fisher, Executor; The Fire Underwriters' Association, Mary F. Field, Edwin P. Fisher, Isadora C. W. Fisher, Launcelot Foster, De Forest Fox, Mrs. H. E. Folsom, W. H. Ford, H. R. Flower, Sophia Flower, Rufus S. Frost, Albert G. Flower; Geo. B. Ford, Cashier; James M. Foss, Mariette A. Ford, Lucyett Fowler, The Galveston Trust Company, Joseph M. Gazzam, J. Herbert Gardner, William C. Gage, The Granite Savings Bank and Trust Company, Nelson M. Gay, Henry D. Gregory, Geo. B. Greenslet, Dascon Green, J. McGregor Gibb, H. H. Gilson, E. H. Goodhue, Timothy M. Griffing, David A. Gorton, Emiline F. Godfrey, Edward H. Gourley, E. Hiram Goodhue, Ellen M. Goodhue, J. E. Goodrich, Egbert Guernsey, Fitzedward Hall, Henry R. Halleway, Emma E. Haman; W. H. Harrison, Ag't; William Hacker, Henry Haines, Estate of Mrs. Caroline B. Hadley, Perley F. Hazen, R. W. Hardon, James R. Hall, Mabel Hall, Ammi R. Hahn, Fred S. Hall, Earl P. Hawes, John D. Hatch; Amy F. Hall, Administratrix; Mrs. E. L. Hatch, Samuel A. Hendrickson, Helena Trust Company, Ernst Hitz, William Higgins, Julia C. Higgins, Edmund F. Higgins, Alfred K. Hills, Benjamin Hinman, James I. Hilliker, Salmer P. Hibbard, Hadley F. Higgins, Clara T. Hitchcock, H. A. Hitchcock, Geo. M. Howe, Alex. Holmes, Caroline Holmes, O. O. Howard, Grace R. Houghton, S. Frank Holley, C. P. Hogan, Henry C. Howe, J. W. Hobart, C. T. A. Humphrey, Thomas L. Hutchins, John H. Husted, Melancie E. Hutchins, Harry M. Hutchins, Sterns Hutchins, Ruhamah P. Inman, Charles L. Jackman, Stephen M. Jaquith, C. H. Jones, Geo. E. Johnson, Anna Warner Johnson, C. H. Joslyn, Peter Joslyn, Keene Guaranty Savings Bank, F. L. Keay, Mary G. Kenney, Charles W. King, Robert R. Kimball, James E. Kimball, James M. Kimball, William B. Kimball, Laura B. Kimball, Geo. Kiernan, Rudolph Koradi, Marie Landon, Henry S. Lawrence, Lucia D. Lane; Mary C. Lawrence and P. J. Farrell, Administrators; Martha H. Leverett, A. L. Leach, C. N. Leonard, J. Bertram Lippincott, Geo. L. Littlefield, H. T. Lillibridge, Thomas Lowry, Frank W. Lebdell, Manufacturers' and Merchants' Mutual Insurance Company, Effingham Maynard, C. H. Manchester, Smith D.

Mackey, John Mason, Fannie H. Maynard, Emma L. Maynard, Drusilla H. Manson, F. S. Mackinzie, Eliz. S. Manchester, Mary E. Marks, B. H. Marshall, Frank A. Merrill, Amanda A. Menage, Bessie M. Menage, Edwin F. Morse, Helen Morse, H. M. Morse, Geo. A. Morse, Martha J. Morse, Bessie Owens Morse, Charles C. Munford, E. B. Munford, Thomas S. McLam, Estate of Mrs. E. McLeod, Mrs. A. H. McLeod, Maud E. McLeod, James McDowell, William McFarland, Owen F. McCabe, Margaret C. McLaren, Lucia E. McNeil, Charles J. McKenzie, Nettie L. Nay, B. M. R. Nelson, Nath. F. Nye, Philip H. Neher, Neher & Carpenter, Mrs. J. W. Nickerson, L. P. Norton, William H. Noyes, John M. Norris, C. H. Olmstead, Orleans Trust Company, E. C. Parker, William S. Palmer, A. D. Paige, Howard S. Paine, Sarah Potter Paine, Louisa J. Prescott, Julius E. Prescott, Harriet M. Perry, Sarah A. Perkins, Curtis H. Pettit, Anna M. Penniman, Willie E. Prescott, John H. Peckett, Charles P. Peret, Pennsylvania Company for Insurance on Lives and Granting Annuities, Trustee for Mary Anna Gazzam under Will of John G. Reading, Deceased; F. T. Perkins, Geo. H. Perkins, Mary K. Perot,

21 Charles W. Pickering, Geo. A. Pillsbury, The Philadelphia Trust, Safe Deposit and Insurance Company, Trustee for Mary Anna Gazzam under Will of John G. Reading, Deceased; Edward G. Pittman, W. N. Potter, C. A. Prouty, James H. Porter, Charles H. Raney, Walter A. Read, Caleb S. Ridgway, A. J. Richardson, Samuel Ricker, Mary A. Ripley, Geo. C. Ripley, Katharine F. K. Rix, Abram T. Rose, Homer E. Royce, Hiram S. Rogers, Robert M. Roive, Franklin B. Rogers, Nancy B. Rose, Abigail Rodman, William H. Rowe, Mrs. J. R. Roblin, Florence P. Robison, Charles W. Ruiter, Chas. H. Sprague, Trustee; J. Bunford Samuel, Mary J. Sanborn, Joel F. Sanborn, Mrs. N. C. Sanborn, W. J. Stanton, Jr; Walter H. Shaefer, Charles M. Swain, Hettie T. Sprague, Henry S. Sprague, Samuel S. Sprague, John Stanton, Wesley Sargent, Minnie E. Stenson, Geo. W. B. Snell, Mary E. Shed, Anna K. Sheldon, Wm. B. Stevens, Henry Smilee, Nellie S. Baker Smith, Walter P. Smith, Susan H. Smith, Mary L. Smith, Isaac B. Smith, Fred E. Smith, William J. Simmons, James F. Shipman, J. Elliot Smith, Charles J. Shoemaker, Carrie M. Story, A. C. Stocking, Jos. C. Snow, Melanie M. Stussy, Thomas Stuart, Elbra S. Taggart, A. P. Taft, E. D. Thayer, Charles S. Tanner, James M. Tyler, Almira O. Titus, J. O. Tilton, Jeremiah D. Tilton, Jno. C. Tilton, Stephen H. Tilden, H. J. Town, Geo. R. Thompson, Martha Towle, George Towle, Walter V. Towle, Mrs. Geo. Towle, Payson Tucker, Richard Tull, L. A. Tuxbury, George Turner, Cyrus Underwood, Edwin Underwood, Geo. M. Vail, Charles T. Walker, Mary L. Watson, Samuel W. Wray, Mary E. Ward, Geo. Wagg, W. D. Washburn, Alfred E. Watson, Josiah A. Wait, R. C. Waite, Charles W. West, Edward G. West, Albert B. Weimer, Rebecca H Weld, Gardner Wetherby, Oren Westcott, H. T. Wetherby, Henry L. Wetherby, E. M. Weston, Charles F. Wignall, J. F. Wright, Sara C. Wilkes, Austin Wright, Charles H. Wilson, Squires J. Wilson, Calvin Wilcox, Alpheus Wilt, Mary Wilt,

Helen G. Williamson, S. L. Wiswell, Florence Wilson, D. Q. Woodruff, Irving S. Woodruff, Horace N. Woodruff, Rawson L. Wood, B. W. Woodward, H. E. and D. Q. Woodruff, William J. Wyley, W. A. Wheeler, and Northwestern Guaranty Loan Company, Defendants.

Summons.

The State of Minnesota to the above-named defendants:

You and each of you are hereby summoned and required to answer the complaint of the plaintiff in the above-entitled action, which complaint is hereto annexed and herewith served upon you, and to serve a copy of your answer to said complaint on the subscribers, at their office, in the city of Minneapolis, in said county of Hennepin, within twenty (20) days after service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in said complaint, together with plaintiff's costs and disbursements herein.

W. E. HALE,
Plaintiff's Attorneys, 926–'34 Guaranty Loan Bldg., Minneapolis, Minn.

22 STATE OF MINNESOTA, }
County of Hennepin. }

District Court, Fourth Judicial District.

ARTHUR R. ROGERS, Plaintiff,

vs.

MINNEAPOLIS TRUST COMPANY, as Receiver of the Northwestern Guaranty Loan Company; Louis F. Menage, Edwin A. Norton; Louis F. Menage and William S. Streeter, Trustees; W. S. Streeter; J. M. Addeman, Trustee; Walter C. Rodman, Montana Trust Company, H. C. Hardon, Geo. Kiernan, H. W. Allen, Cyrus J. Anderson, Loren C. Ayer, William F. Andrews, Elizabeth A. Allen, Geo. E. Ashley, F. E. Alfred, Ella J. Ackley, D. R. Allison, W. S. Allis, E. L. Ainsley, Edward P. Allison, Gertrude Allison, L. F. Aldrich, Willis R. Armstrong, Lewis W. Anthony, C. H. Austin, W. H. Blaisdell, Addie P. Baker, C. H. Bailey, George Brainerd, Geo. P. Blair, Nettie A. Bassett, E. Baldwin, H. T. Baldwin, Ellen Baldwin, B. M. Braley, A. P. Braley, Henry Ballard, F. W. Ballard, Geo. H. Bartlett, Adeline W. Batchelder, Lydia R. Bartlett, E. C. Blanchard, George H. Bartlett, Cornelia W. Ball, Elizabeth V. Bailey; E. W. Baxter, Estate of William Breck; K. A. Benedict, Ben. S. Benton, Lauraette Bingham, William R. Bridges, Addie I. Bibber, Reed B. Bontecon, W. A. Brooks, James W. Brock, Alson Brown, Fred A. Brown, Elizabeth J. Brown, Samuel N. Brown, A. A. Brooks, William Burnham, Fannie E. Buckminster, Gates B. Bullard, Albert F. Burdett; Geo. Burnham, Jr.; Joseph A. Budlong, Geo. A. Buffum, Frank H. Clark; The Capital Fire Insurance Company of Concord, N. H.; Mary E. Carpenter, Har-

vey Carpenter, S. E. Caswell, Frank B. Carr, Maria P. Clark, William H. Clark, Isabel H. Charlton, James Clark, Helen M. Clark, F. R. Chase, James Caird, James H. Carpenter, H. Maria Capron, Albert E. Calder, Silas Carey, James E. Case, Ellis Clark, William P. Chamberlain, Mary E. Carpenter, E. A. Chittenden, W. A. Childs, Daniel Coffrin, Ellis M. Coe, Charles Cobb, John H. Converse, David Coe, A. A. Coe, Charles H. Cross, L. Bart Crose, Ira Colby, F. H. Colby, William H. Cook, William G. Crocker, Hezekiah Conant, N. Stanton Coffin, Elizabeth M. Colt, Geo. W. Cornell, James M. Crowell, Mrs. R. K. Leverett Cushman, Henry L. Cushman, J. Jay Dana, S. W. Dana, Elmer A. Darling, A. B. Darling, Wilbur P. Davis, William L. Damon, Edwin Davis, Carrie L. Dean, Alfred J. Dean, Jane V. Delano, John W. Dean, W. S. Dewey, J. J. Dewey, D. C. Dennison, Elizabeth Dean, William E. Dean, Fred W. Dean, George F. Dean, J. E. Dickerman, J. E. Dwinnell, Lucy F. Dillaway, Clara E. Dickson, William M. Dickson, John C. Dickson, H. L. Dickerman, Walter Dole, O. G. Dort, Oliver H. Durrell, Sophia G. Durrell; Geo. B. Davis and Phil T. Walker, Executors; J. L. Edwards, Nancy J. Elms, Jacob Edwards; W. T. Emerson, Guardian; Estate of Stephen Emigh, Thomas Fairbrother, Mrs. William P. Fairbanks,
23 Edward T. Fairbanks, William P. Fa-rbanks, Francis A. Fales, Mrs. O. F. Fassett, Amasa Fairbrother, Myron Fairbrother, Freewill Baptist Printing Establishment, The Freewill Baptist Education Society; Loren Fletcher and Charles M. Loring, as Partners as L. Fletcher & Co.; Anna T. Fernald, E. N. Fernald, Guardian; The Freewill Baptist Foreign Miss. Society, A. Clark Fellows; Eustace W. Fisher, Executor; The Fire Underwriters' Association, Mary F. Field, Edwin P. Fisher, Isadora C. W. Fisher, Launcelot Foster, De Forest Fox, Mrs. H. E. Folsom, W. H. Ford, H. R. Flower, Sophia Flower, Rufus S. Frost, Albert G. Flower; Geo. B. Ford, Cashier; James M. Foss, Marietta A. Ford, Lucyett Fowler, The Galveston Trust Company, Joseph M. Gazzam, J. Herbert Gardner, William C. Gage, The Granite Savings Bank and Trust Company, Nelson M. Gay, Henry D. Gregory, Geo. B. Greenslet, Dascon Green, J. McGregor Gibb, H. H. Gilson, E. H. Goodhue, Timothy M. Griffing, David A. Gorton, Emiline F. Godfrey, Edward H. Gourley, E. Hiram Goodhue, Ellen M. Goodhue, J. E. Goodrich, Egbert Guernsey, Fitzedward Hall, Henry R. Halleway, Emma E. Haman; W. H. Harrison, Ag't; William Hacker, Henry Haines, Estate of Mrs. Caroline B. Hadley, Perley F. Hazen, R. W. Hardon, James R. Hall, Mabel Hall, Ammi R. Hahn, Fred S. Hall, Earl P. Hawes, John D. Hatch; Amy F. Hall, Administratrix; Mrs. E. L. Hatch, Samuel A. Hendrickson, Helena Trust Company, Ernst Hitz, William Higgins, Julia C. Higgins, Edmund F. Higgins, Alfred K. Hills, Benjamin Hinman, James I. Hilliker, Salmer P. Hibbard, Hadley F. Higgins, Clara T. Hitchcock, H. A. Hitchcock, Geo. M. Howe, Alex. Holmes, Caroline Holmes, O. O. Howard, Grace R. Houghton, S. Frank Holley, C. P. Hogan, Henry C. Howe, J. W. Hobart, C. T. A. Humphrey, Thomas L. Hutchins, John H. Husted, Melancie E. Hutchins,

Harry M. Hutchins, Sterns Hutchins, Ruhamah P. Inman, Charles L. Jackson, Stephen M. Jaquith, C. H. Jones, Geo. E. Johnson, Anna Warner Johnson, C. H. Joslyn, Peter Joslyn, Keene Guaranty Savings Bank, F. L. Keay, Mary G. Kenney, Charles W. King, Robert R. Kimball, James E. Kimball, James M. Kimball, William B. Kimball, Laura B. Kimball, Geo. Kiernan, Rudolph Koradi, Marie Landon, Henry S. Lawrence, Lucia D. Lane; Mary C. Lawrence and P. J. Farrell, Administrators; Martha H. Leverett, A. L. Leach, C. N. Leonard, J. Bertram Lippincott, Geo. L. Littlefield, H. T. Lillibridge, Thomas Lowry, Frank W. Lebdell, Manufacturers' and Merchants' Mutual Insurance Company, Effingham Maynard, C. H. Manchester, Smith D. Mackey, John Mason, Fannie H. Maynard, Emma L. Maynard, Drusilla H. Manson, F. S. Mackinzie, Eliz. S. Manchester, Mary E. Marks, B. H. Marshall, Frank A. Merrill, Amanda A. Menage, Bessie M. Menage, Edwin F. Morse, Helen Morse, H. M. Morse, Geo. A. Morse, Martha J. Morse, Bessie Owens Morse, Charles C. Munford, E. B. Munford, Thomas S. McLam, Estate of Mrs. E. McLeod, Mrs. A. H. McLeod, Maud E. McLeod, James McDowell, William McFarland, Owen F. McCabe, Margaret C. McLaren, Lucia E. McNeil, Charles J. McKenzie, Nettie L. Nay, B. M. R. Nelson, Nath. F. Nye, Philip H. Neher, Neher & Carpenter, Mrs. J. W. Nickerson, L. P. Norton, William H. Noyes, John M. Norris, C. H. Olmstead, Orleans Trust Company, E. C. Parker, William S. Palmer, A. D. Paige, Howard S. Paine, Sarah Potter Paine, Louisa J. Prescott, Julius E. Prescott, Harriet M. Perry, Sarah A. Perkins, Curtis H. Pettit, Anna M. Penniman, Willie E. Prescott, John H. Peckett, Charles P. Peret; Pennsylvania Company for
Insurance on Lives and Granting Annuities, Trustee for
24 Mary Anna Gazzam under Will of John G. Reading, Deceased; F. T. Perkins, Geo. H. Perkins, Mary K. Perot, Chas. W. Pickering, Geo. A. Pillsbury; The Philadelphia Trust, Safe Deposit and Insurance Company, Trustee for Mary Anna Gazzam under Will of John G. Reading, Deceased; Edward G. Pittman, W. N. Potter, C. A. Prouty, James H. Porter, Charles H. Raney, Walter A. Read, Caleb S. Ridgway, A. J. Richardson, Samuel Ricker, Mary A. Ripley, Geo. C. Ripley, Katherine F. K. Rix, Abram T. Rose, Homer E. Royce, Hiram S. Rogers, Robert M. Roive, Franklin B. Rogers, Nancy B. Rose, Abigail Rodman, William H. Rowe, Mrs. J. R. Roblin, Florence P. Robison, Charles W. Ruiter; Chas. H. Sprague, Trustee; J. Bunford Samuel, Mary J. Sanborn, Joel F. Sanborn, Mrs. N. C. Sanborn, W. J. Stanton, Jr., Walter H. Shaefer, Charles M. Swain, Hettie T. Sprague, Henry S. Sprague, Samuel S. Sprague, John Stanton, Wesley Sargent, Minnie E. Stenson, Geo. W. B. Snell, Mary E. Shed, Anna K. Sheldon, Wm. B. Stevens, Henry Smilee, Nellie S. Baker Smith, Walter P. Smith, Susan H. Smith, Mary L. Smith, Isaac B. Smith, Fred E. Smith, William J. Simmons, James F. Shipman, J. Elliot Smith, Charles J. Shoemaker, Carrie M. Story, A. C. Stocking, Jos. C. Snow, Melanie M. Stussy, Thomas Stuart, Elbra S. Taggart, A. P. Taft, E. D. Thayer, Charles S. Tanner, James M. Tyler,

Almira O. Titus, J. O. Tilton, Jeremiah D. Tilton, Jno. C. Tilton, Stephen H. Tilden, H. J. Town, Geo. R. Thompson, Martha Towle, George Towle, Walter V. Towle, Mrs. Geo. Towle, Payson Tucker, Richard Tull, L. A. Tuxbury, George Turner, Cyrus Underwood, Edwin Underwood, Geo. M. Vail, Charles T. Walker, Mary L. Watson, Samuel W. Wray, Mary E. Ward, Geo. Wagg, W. D. Washburn, Alfred E. Watson, Josiah A. Wait, R. C. Waite, Charles W. West, Edward G. West, Albert B. Weimer, Rebecca H. Weld, Gardner Wetherby, Oren Westcott, H. T. Wetherby, Henry L. Wetherby, E. M. Weston, Charles F. Wignall, J. F. Wright, Sara C. Wilkes, Austin Wright, Charles H. Wilson, Squires J. Wilson, Calvin Wilcox, Alpheus Wilt, Mary Wilt, Helen G. Williamson, S. L. Wiswell, Florence Wilson, D. Q. Woodruff, Irving S. Woodruff, Horace N. Woodruff, Rawson L. Wood, B. W. Woodward, H. E. and D. Q. Woodruff, William J. Wyley, W. A. Wheeler, and Northwestern Guaranty Loan Company, William Tooth, Mrs. A. G. Thompson, Defendants.

Amended Complaint.

The plaintiff above named, on behalf of himself and of all other creditors of the defendant Northwestern Guaranty Loan Company, who shall in due time exhibit their claims against said Northwestern Guaranty Loan Company, and who shall become parties to this action, for amended complaint herein, alleges:

I.

That the defendant, Northwestern Guaranty Loan Company, now is, and during all the time since the 1st of May, A. D. 1884, has continued to be, a corporation duly organized under and pursuant to title two, of chapter thirty-four, of the General Statutes of 1878, of the State of Minnesota, and the amendments thereto; that a copy of the articles of incorporation adopted by said Northwestern Guaranty Loan Company at the time it was so incorporated, and under which it continued to act, is hereto attached, marked "Exhibit A," and made a part of this complaint.

That on the 5th day of August, 1884, said articles of incorporation were duly amended as follows:

"Be it resolved, by the stockholders of the Northwestern Guaranty Loan Company that the highest amount of indebtedness or liability to which said corporation shall at any time be subject, excepting the contingent liability of guaranty, shall be twenty-five thousand dollars ($25,000), and that the articles of incorporation of said corporation be and the same are hereby amended accordingly, said articles so amended will read as follows, to wit:

ARTICLE IV.

The highest amount of indebtedness or liability to which said corporation shall at any time be subject, excepting its contingent liability of guaranty shall be twenty-five thousand dollars ($25,000)."

That thereafter, and on the 27th day of January, 1888, said articles of incorporation were again duly amended as follows:

"Resolved, That article six (6) of the articles of incorporation of the Northwestern Guaranty Loan Company be amended so that the same shall read as follows:

ARTICLE VI.

The names of the persons constituting the first board of directors of said corporation are Louis F. Menage, Robert S. Innes, Benjamin S. Bull, Sewell P. Channell and Julius E. Miner. The government of said corporation and the management of its affairs shall be vested in a board of directors, consisting of fifteen (15) persons, and in a president, two vice-presidents, a secretary and treasurer. The secretary and treasurer may be the same person. The directors shall be elected by the stockholders of said corporation, at their annual meeting in each year. Additions to and vacancies occurring in the board of directors by death, resignation, or otherwise, may be filled by the stockholders at any meeting thereof. The other officers shall be elected by the board of directors annually, and said board of directors may, besides the above-mentioned officers, appoint such officers and agents as the business of said corporation may require. The elections shall be held at such times in each year as shall be prescribed by the by-laws of said corporation.

Resolved, That article four (4) of the articles of incorporation of said Northwestern Guaranty Loan Company, be so amended as to read as follows:

ARTICLE IV.

The highest amount of indebtedness or liability to which said corporation shall at any time be subject, exclusive of its contingent liability of guaranty, and exclusive of debentures issued by this corporation, the payment of which is secured by the transfer
26 of real-estate securities, equal, at least, to the amount of said debentures, to a trustee for the security and benefit of the holder of said debentures, shall be three-fourths of the paid-in capital stock of said corporation."

That thereafter and on the 2d day of May, 1892, said articles of incorporation were again duly amended as follows:

"Resolved, That article IV of the articles of incorporation of the Northwestern Guaranty Loan Company be amended so that the same shall read as follows:

ARTICLE IV.

The highest amount of indebtedness or liability to which said corporation shall at any time be subject, exclusive of its contingent liability of guaranty, and exclusive of debentures issued by, or other obligations of this corporation, the payment of which is secured by real-estate mortgages, or other securities, and exclusive of payments made to it to meet unmatured obligations due to the corporation, shall be three-fourths of the paid-in capital stock of said corporation."

II.

That said defendant, Minneapolis Trust Company, now is and during all the time hereinafter mentioned, has continued to be a corporation duly organized under and pursuant to the general laws of the State of Minnesota.

That on the 20th day of May, 1893, said defendant, Northwestern Guaranty Loan Company, was, for a long time prior thereto had continued to be, and now is, hopelessly insolvent; that in insolvency proceedings pending in this court, on said 20th day of May, 1893, the said Northwestern Guaranty Loan Company was duly adjudged by the court to be insolvent, and under and pursuant to the general laws of the State of Minnesota, relating to assignments and insolvency proceedings for the benefit of creditors, and for the appointment of receivers, said Minneapolis Trust Company was duly appointed the receiver of said Northwestern Guaranty Loan Company; that a copy of the order making such appointment is hereto attached, marked "Exhibit B," and made a part of this complaint.

That thereafter, and on the said same day, said Minneapolis Trust Company accepted the appointment of said receivership, duly qualified and entered upon its duties as such said receiver, and has ever since continued to be, and now is, such said receiver.

That as such receiver of the insolvent Northwestern Guaranty Loan Company, said Minneapolis Trust Company, immediately, after it had accepted the trust as aforesaid, and duly qualified as such said receiver, took possession of and still holds all the property and effects in any way theretofore belonging to said Northwestern Guaranty Loan Company; that said Minneapolis Trust Company as such said receiver is joined as a party defendant to this action, by leave of said district court, first had and obtained, and that by the order of said district court, in and for said Hennepin county, leave has been duly given and granted the plaintiff to commence this action against the Minneapolis Trust Company, as such receiver of the Northwestern Guaranty Loan Company.

That said defendants, Montana Trust Company, and Helena Trust Company, now are and during all the time hereinafter
27 mentioned have continued to be, corporations duly organized and existing under and by virtue of the laws of the State of Montana.

That said defendants, The Capital Fire Insurance Company, The Underwriters' Association, Keene Guaranty Savings Bank, and Manufacturers' and Merchants' Mutual Insurance Company, respectively, now are and during all the time hereinafter mentioned, have continued to be, corporations duly organized and existing under and pursuant to the laws of the State of New Hampshire.

That said defendants, Freewill Baptist Printing Establishment, The Freewill Baptist Education Society, The Freewill Baptist Foreign Missionary Society, respectively, now are, and during all the time hereinafter mentioned, have continued to be corporations duly organized and existing under and pursuant to the laws of the State of Massachusetts.

That said defendants, The Granite Saving Bank and Trust Company, and Orleans Trust Company, now are and during all the time hereinafter mentioned, have continued to be corporations duly organized and existing under and pursuant to the laws of the State of Vermont.

That said defendant, The Galveston Trust Company, now is, and during all said time, has continued to be, a corporation duly organized and existing under and pursuant to the laws of the State of Texas.

That said defendants, Loren Fletcher and Charles M. Loring, now are and during all said time have continued to be partners in business, and doing business under the firm name of L. Fletcher & Co.

III.

That on the 3d day of October, 1893, in an action then pending in the supreme court, of the State of Minnesota, between L. Kimball Printing Company, respondent, and Northwestern Guaranty Loan Company, appellant, a judgment was duly obtained and entered by and in favor of said L. Kimball Printing Company, and against said Northwestern Guaranty Loan Company, for the sum of $46, as the costs and disbursements of said respondent, in said supreme court, in said action.

That thereafter and on the 18th day of October, 1893, a transcript of said judgment was duly filed and docketed in the office of the clerk of the district court, in and for Hennepin county, Minnesota.

That thereafter and on the 18th day of October, 1893, such proceedings were further duly had in said supreme court, that a writ of execution was on said judgment duly issued out of and under the seal of said supreme court, in the usual form, and on the same day, delivered to the sheriff of Hennepin county, whereby said sheriff was commanded to satisfy said judgment out of any property of said Northwestern Guaranty Loan Company, within his said county, not exempt by law.

That thereafter and on the same day, said sheriff duly returned said writ of execution wholly unsatisfied.

That prior to the commencement of this action, and on the 18th day of October, 1893, said judgment for $46, aforesaid, was duly assigned to said plaintiff, for a valuable consideration, by said L. Kimball Printing Company, and said assignment was duly filed in the office of the clerk of said district court, on the 18th day of October, 1893.

That plaintiff has ever since been and now is the owner of said judgment, and that same or any part thereof has not been paid or satisfied.

28 IV.

That said Northwestern Guaranty Loan Company, was, at the time of the entry of said judgment in said supreme court of the State of Minnesota, and at the time of docketing the same in the

district court, in and for said Hennepin county, ever since has been, and now is, wholly and hopelessly insolvent, and has no property or means of any kind whatsoever, which may be levied upon or attached, or which may be reached by any writ, order or process of this court, or otherwise, and from which said judgment might have been or may now be satisfied, either in whole or in part; and that said defendant, The Northwestern Guaranty Loan Company, has no property or assets whatsoever, but that all the property and assets of every kind and nature heretofore owned by said defendant, Northwestern Guaranty Loan Company, are now in the hands of the Minneapolis Trust Company, as receiver, aforesaid, of the Northwestern Guaranty Loan Company, insolvent, and that said property and assets in its hands as such receiver, are not of any higher or greater value than the sum of six hundred thousand dollars, and that no other or greater sum than the sum of six hundred thousand dollars can in any event be realized therefrom, and that said sum will not be sufficient to pay the creditors of said The Northwestern Guaranty Loan Company who have proved their claims against the said Northwestern Guaranty Loan Company, and who have duly filed releases of their said claims, as provided by law.

That the defendant, The Northwestern Guaranty Loan Company, now is, and for more than two years last past has continued to be, indebted in large sums, to wit: in the sum of more than three millions of dollars, to a very large number of persons, located in this State and in many other States of the United States, but as to the names of such persons, and as to the amounts of the different indebtedness of said defendant, The Northwestern Guaranty Loan Company, to each of said persons, this plaintiff has not sufficient knowledge or information to state the same, but he alleges that the payment in each case of the whole total liabilities of the stockholders of the said Northwestern Guaranty Loan Company, to wit: one and one-quarter millions of dollars, will be wholly insufficient to pay the creditors of the said Northwestern Guaranty Loan Company in full, even after they have received the dividend to be paid them by said Minneapolis Trust Company, as such receiver.

And plaintiff alleges that this action is brought in his own behalf and in behalf of all the other creditors of said defendant, The Northwestern Guaranty Loan Company, who shall exhibit their claims herein against said defendant, The Northwestern Guaranty Loan Company, and who shall become parties to this action, and that this action is so brought in his own behalf and in behalf of all said creditors of said defendant, The Northwestern Guaranty Loan Company, who shall exhibit their claims herein, and become parties to this action under and pursuant to the provisions of chapter seventy-six of the General Statutes of Minnesota, and all the acts amendatory thereof, and under the laws and rules applicable to actions of a like nature, to enforce the liability and obligation under the constitution and laws of the State of Minnesota, of all the stockholders of said defendant, The Northwestern Guaranty Loan Company, herein named, to plaintiff, and to all the creditors of said defendant, North-

western Guaranty Loan Company, who shall exhibit their claims herein and become parties to this action.

29 V.

Plaintiff further alleges that the capital stock of said Northwestern Guaranty Loan Company, according to said articles of incorporation, was to be two million dollars, which was divided into twenty thousand shares of one hundred dollars each. One and a quarter millions of dollars of said stock was subscribed for and issued prior to the time when all the indebtedness and liability of said Northwestern Guaranty Loan Company, hereinbefore mentioned, was created. Plaintiff alleges that no more capital stock was ever issued by said company than the one and a quarter millions of dollars above mentioned. That the following-named persons, defendants in this action, are, and for more than one year last past have continued to be, stockholders of said Northwestern Guaranty Loan Company, and now own, and have continued to own for a longer time than that just mentioned, the number of shares of capital stock of said corporation of the par value set opposite their respective names in the following statement, to wit:

Name.	Address.	Am't stock.
Menage & Streeter, trustees	Minneapolis, Minn.	$4,600
Louis F. Menage	Minneapolis, Minn.	230,800
W. S. Streeter	Minneapolis, Minn.	2,000
Edwin A. Norton	Brookline, Mass	120,000
J. M. Addeman, trustee	Providence, R. I.	10,000
Walter C. Rodman	Philadelphia, Pa.	3,900
Montana Trust Co.	Great Falls, Mont	94,200
H. C. Hardon.	Newton, Mass.	17,000
Geo. Kiernan	Sag Harbor, N. Y.	500
H. W. Allen	St. Johnsbury, Vt.	900
Cyrus J. Anderson	Boston, Mass	5,000
Loren C. Ayer	East Burke, Vt	400
William F. Andrews	Providence, R. I.	5,000
Elizabeth A. Allen	Sandy Hill, N. Y.	500
Geo. E. Ashley	Burlington, Vt.	500
F. E. Alfred	Newport, Vt.	300
Ella J. Ackley	Hockanum, Conn	300
D. R. Allison	Wells River, Vt.	200
W. S. Allis	Norwich, Conn	400
Mrs. E. L. Ainsley	Boston, Mass	500
Edward P. Allison	Philadelphia, Pa	1,500
Gertrude Allison	Philadelphia, Pa.	2,500
L. F. Aldrich	Barre, Vt.	2,000
Willis R. Armstrong	Philadelphia, Pa.	1,500
Lewis W. Antony	Providence, R. I.	4,000
C. H. Austin	Barton Landing, Vt	1,500
W. H. Blaisdell	Barton Landing, Vt.	1,000
Addie P. Baker	Antrim, N. H.	1,800
C. H. Bailey	Boston, Mass	3,000
Geo. Brainerd	Montpelier, Vt.	500
Geo. P. Blair	West Barnett, Vt	1,000
Nettie A. Bassett	Providence, R. I.	700
30 E. Baldwin	Wells River, Vt	3,000
H. T. Baldwin	Wells River, Vt.	500
Ellen Baldwin	Wells River, Vt	1,500
R. M. Braley	Barre, Vt.	500
A. P. Braley	Barre, Vt.	500

	Name.	Address.	Am't stock.
	Henry Ballard	Burlington, Vt.	500
	F. W. Ballard	Burlington, Vt.	1,000
	Geo. H. Bartlett	Hoosick Falls, N. Y.	500
	Adeline W. Batchelder	Milwaukee, Wis	10,000
	Lydia R. Bartlett	Hoosick Falls, N. Y	500
	E. C. Blanchard	Newport, Vt.	300
	George H. Bartlett	Hoosick Falls, N. Y.	500
	Cornelia W. Ball	Troy, N. Y	600
	Elizabeth V. Bailey	Troy, N. Y	400
	E. W. Baxter	Sharon, Vt	2,000
	Estate of William Breck	Claremont, N. H	1,000
	K. A. Benedict	Burlington, Vt.	2,000
	Ben. S. Benton	Minneapolis, Minn.	2,000
	Mrs Lauraette Bingham	St. Johnsbury, Vt	300
	William R. Bridges	Troy, N. Y	500
	Addie I. Bibber	Portland, Me	1,700
	Reed B. Bontecon	Troy, N. Y	2,500
	W. A. Brooks	Chicago, Ill	500
	James W. Brock	Montpelier, Vt.	1,000
	Alson Brown	Newport, Vt.	1,000
	Fred A. Brown	Newport, Vt.	500
	Elizabeth J. Brown	Boston, Mass	2,000
	Samuel N. Brown	Boston, Mass	1,500
	A. A. Brooks	Bethel, Vt.	500
	William Burnham	Philadelphia, Pa.	2,000
	Fannie B. Buckminster	Antrim, N. H.	200
	Gates B. Ballard	St. Johnsbury, Vt.	300
	Alfred F. Burdett	Boston, Mass	1,000
	Geo. Burnham, Jr.	Philadelphia, Pa.	2,000
	Joseph A. Budlong	Providence, R. I.	5,000
	George A. Buffum	Providence, R. I.	2,000
	Frank H. Clark	Utica, N. Y.	500
	The Capital Fire Insurance Co.	Concord, N. H.	1,000
	Mary E. Carpenter	Cambridge, N. Y.	500
	Harvey Carpenter	Cambridge, N. Y.	1,000
	Mrs. S. E. Caswell	Chelsea, Vt.	500
	Frank B. Carr	Fitchburg, Mass	400
	Maria P. Clark	Walpole, Mass.	800
	William H. Clark	Helena, Mont.	2,500
	Isabel H. Charlton	Philadelphia, Pa.	400
	James Clark	Boston, Mass	1,000
	Helen M. Clark	Helena, Mont.	1,300
	F. R. Chase	Minneapolis, Minn	16,000
	James Caird	Troy, N. Y	700
	James H. Carpenter	Troy, N. Y.	1,600
31	H. Maria Capron	Providence, R. I.	$1,000
	Albert E. Calder	Providence, R. I.	10,000
	Silas Carey	Newton, Pa.	1,000
	James E. Case	Boston, Mass.	5,000
	Ellis Clark	Philadelphia, Pa.	800
	William P. Chamberlain	Keene, N. H.	1,000
	Mary E. Carpenter	Troy, N. H	600
	E. A. Chittenden	St. Albans, Vt.	300
	W. A. Childs	Calumet, Mich.	800
	Daniel Coffrin	Groton, Vt	500
	Ellis M. Coe	Burke, Vt.	2,500
	Charles Cobb	St. Johnsbury Center, Vt.	1,700
	John H. Converse	Philadelphia, Pa.	6,500
	David Coe	Burke, Vt.	1,000
	Mrs. A. A. Coe	Burke, Vt.	600
	Charles H. Cross	Montpelier, Vt.	1,000
	L. Bart Crose	Montpelier, Vt.	1,000
	Ira Colby	Claremont, N. H	600
	F. H. Colby	McIndoes Falls, Vt.	1,000
	William H. Cook	Bridgehampton, L. I., N. Y.	200

	Name.	Address.	Am't stock.
	William G. Crocker	Minneapolis, Minn.	13,100
	Hezekiah Conant	Pawtucket, R. I.	5,000
	N. Stanton Coffin	Minneapolis, Minn.	1,000
	Elizabeth M. Colt	Bristol, R. I	1,000
	George W. Cornell	Newton, Pa.	1,000
	James M. Crowell	Philadelphia, Pa.	3,000
	Mrs. K. R. Leverett Cushman	Plymouth, N. H.	800
	Henry L. Cushman	Auburn, Me	2,000
	J. Jay Dana	Housatonic, Mass.	1,300
	S. W. Dana	Philadelphia, Pa.	1,400
	Elmer A. Darling	New York city.	5,000
	A. B. Darling	New York city	5,000
	Wilbur P. Davis	St. Albans, Vt.	200
	William L. Damon	Woodstock, Vt.	500
	Edwin Davis	Woodstock, Vt.	300
	Carrie L. Dean	Minneapolis, Minn.	2,500
	Alfred J. Dean	Minneapolis, Minn.	6,200
	Jane V. Delano	East Hardwick, Vt.	700
	John W. Dean	Newfield, N. Y	800
	W. S. Dewey	Quechee, Vt.	1,000
	J. J. Dewey	Quechee, Vt.	1,000
	D. C. Denison	Royalton, Vt.	500
	Elizabeth Dean	Minneapolis, Minn.	200
	William E Dean	Minneapolis, Minn.	200
	Fred W. Dean	Minneapolis, Minn.	200
	George F. Dean	Minneapolis, Minn.	200
	J. E. Dickerman	Newport, Vt.	1,000
	J. E. Dwinell	Glover, Vt	500
	Lucy F. Dillaway	South Boston, Mass.	500
32	Clara E. Dickson	McIndoes Falls, Vt.	500
	William M. Dickson	McIndoes Falls, Vt.	700
	John C. Dickson	McIndoes Falls, Vt	1,000
	H. L. Dickerman	Rutland, Vt.	500
	Walter Dole	Emfield, N. H.	500
	O. G. Dort	Keene, N. H	1,000
	Oliver H. Durrell	Cambridge, Mass.	2,000
	Sophia G. Durrell	Cambridge, Mass.	500
	Geo. B. Davis and Phil. T. Walker, executors	Danville, Vt.	500
	J. L. Edwards	Newport, Vt.	1,500
	Nancy J. Elms	South Boston, Mass.	300
	Jacob Edwards	Boston, Mass	5,000
	W. T. Emerson, guardian	Worcester, Mass	500
	Estate of Stephen Emigh	New York city	10,000
	Thomas Fairbrother	East Burke, Vt	4,000
	Mrs. William P. Fairbanks	St. Johnsbury, Vt.	3,000
	Edward T. Fairbanks	St. Johnsbury, Vt.	2,500
	William P. Fairbanks	New York city.	1,500
	Francis A. Fales	Troy, N. Y.	5,000
	Mrs. O. F. Fassett	St. Albans, Vt.	3,000
	Amasa Fairbrother	East Albans, Vt	1,800
	Myron Fairbrother	Portland, Me.	1,700
	Freewill Baptist Printing Establishment	Boston, Mass.	2,000
	The Freewill Baptist Education Society	Boston, Mass	1,600
	L. Fletcher & Co.	Minneapolis, Minn.	1,000
	Anna T. Fernald	Milton Mills, N. H.	600
	E. N. Fernald, guardian	Milton Mills, N. H.	800
	The Freewill Baptist Foreign Missionary Society	Boston, Mass.	1,000
	A. Clark Fellows	Troy, N. Y.	3,000
	Eustace W. Fisher, executor	New York city	3,000
	The Fire Underwriters' Ass'n	Concord, N. H	500
	Mary F. Field	Chicago, Ill.	1,000
	Edwin P. Fisher	Bethel, Vt.	100
	Isadora C. W. Fisher	Cabot, Vt.	500

	Name.	Address.	Am't stock.
	Launcelot Foster	Troy, N. Y	1,200
	De Forest Fox	New York city	7,500
	Mrs. H. E. Folsom	Lyndonville, Vt	200
	W. H. Ford	Lyndonville, Vt	200
	H. R. Flower	Newport, Vt	1,300
	Sophia Flower	Newport, Vt	300
	Rufus S. Frost	Boston, Mass	1,000
	Albert G. Flower	Lowell, Mass	500
	Geo. B. Ford, cash	Boston, Mass	500
	James M. Foss	St. Albans, Vt	5,000
	Mariette A. Ford	Troy, N. Y	300
33	Lucyette Fowler	Buda, Ill	1,700
	The Galveston Trust Co	Galveston, Tex	11,000
	Joseph M. Gazzam	Philadelphia, Pa	5,000
	J. Herbert Gardner	P. O. Slocumville, R. I	2,500
	William C. Gage	Sherbrooke, P. Q	200
	The Granite Savings Bank and Trust Company	Barre, Vt	2,000
	Nelson M. Gay	Gaysville, Vt	1,000
	Henry D. Gregory	Philadelphia, Pa	1,500
	Geo. B. Greenslet	Glens Falls, N. Y	1,000
	Dascon Green	Troy, N. Y	1,000
	J. McGregor Gibb	Philadelphia, Pa	5,000
	H. H. Gilson	Bethel, Vt	500
	E. H. Goodhue	Mattapan, Mass	1,000
	Timothy M. Griffing	Riverhead, L. I., N. Y	500
	David A. Gorton	Brooklyn, N. Y	1,000
	Emiline F. Godfrey	Philadelphia, Pa	300
	Edward H. Gourley	Newtown, Pa	400
	E. Hiram Goodhue	Mattapan, Mass	500
	Ellen M. Goodhue	Mattapan, Mass	500
	J. E. Goodrich	Burlington, Vt	2,000
	Egbert Guernsey	New York city	2,000
	Fitzedward Hall	Troy, N. Y	6,500
	Henry R. Halleway	Plainfield, N. J	100
	Emma E. Haman	Philadelphia, Pa	300
	W. H. Harrison, agent	Onondaga Valley, N. Y	1,000
	William Hacker	Philadelphia, Pa	2,500
	Henry Haines	Philadelphia, Pa	1,000
	Estate of Mrs. Caroline B. Hadley	St. Johnsbury, Vt	1,500
	Perley F. Hazen	St. Johnsbury, Vt	1,000
	R. W. Hardon	Newton, Mass	100
	James R. Hall	Newport, Vt	1,000
	Mabel Hall	Newport, Vt	200
	Ammi R. Hahn	East Boston, Mass	2,500
	Fred. S. Hall	Concord, N. H	1,000
	Earl P. Hawes	Providence, R. I	700
	Jo. D. Hatch	Burlington, Vt	600
	Amy F. Hall, administratrix	Newport, Vt	500
	Mrs. E. L. Hatch	Salem, Mass	500
	Samuel A. Hendrickson	Philadelphia, Pa	5,000
	Helena Trust Company	Helena, Montana	13,700
	Ernst Hitz	Philadelphia, Pa	100
	William Higgins	St. Johnsbury, Vt	500
	Julia C. Higgins	St. Johnsbury, Vt	500
	Edmund F. Higgins	Manchester, N. H	1,500
	Alfred K. Hills	New York city	1,500
	Benjamin Hinman	Newport, Vt	1,000
	James I. Hilliker	Troy, N. Y	30,000
	Salmon P. Hibbard	Boston, Mass	1,000
34	Hadley F. Higgins	Manchester, N. H	1,000
	Clara T. Hitchcock	Hanover, N. H	500
	H. A. Hitchcock	Hanover, N. H	1,000
	Geo. M. Howe	St. Johnsbury, Vt	1,500
	Alex. Holmes	Barnet, Vt	1,500

Name.	Address.	Am't stock.
Caroline Holmes	Barnet, Vt	500
O. O. Howard	Governor's Island, N. Y	200
Grace R. Houghton	Montpelier, Vt	1,000
S. Frank Holley	Troy, N. Y	400
C. P. Hogan	St. Albans, N. Y	500
Henry C. Howe	Lowell, Mass	1,000
J. W. Hobert	St. Albans, Vt	2,000
C. T. A. Humphrey	East Burke, Vt	8,000
Thomas L. Hutchins	Providence, R. I	1,200
John H. Husted	Georgetown, Col	5,000
Melancie E. Hutchins	Providence, R. I	700
Harry M. Hutchins	Providence, R. I	800
Sterns Hutchins	Providence, R. I	2,000
Ruhamah P. Inman	Pascoag, R. I	2,000
Charles L. Jackman	Concord, N. H	200
Stephen M. Jaquith	Schuylerville, N. Y	300
C. H. Jones	Barton Landing, Vt	7,000
Geo. E. Johnson	Burlington, Vt	400
Anna Warner Johnson	Cohoes, N. Y	500
C. H. Joslyn	Bloomington, Vt	1,000
Peter Joslyn	Newport, Vt	500
Keene Guaranty savings bank	Keene, N. H	5,000
F. L. Keay	Boston, Mass	5,000
Mary G. Kenney	Griggsville, Ill	2,500
Charles W. King	Lunneberg, Vt	500
Robert R. Kimball	Boston, Mass	500
James E. Kimball	Troy, N. Y	2,500
James M. Kimball	Providence, R. I	2,300
William B. Kimball	Providence, R. I	5,000
Laura B. Kimball	Providence, R. I	700
Mrs. Geo. Kiernan	Sag Harbor, N. Y	200
Rudolph Koradi	Philadelphia, Pa	200
Marie Landon	Cedar Falls, Ia	500
Henry S. Lawrence	Newport, Vt	2,000
Lucia D. Lane	Newport, Vt	500
Mary C. Lawrence, P. J. Farrell, administrators, estate of H. S. Lawrence	Newport, Vt	500
Martha H. Leverett	Plymouth, N. H	500
A. L. Leach	Sheldon, Vt	300
C. N. Leonard	Taunton, Mass	200
J. Bertram Lippincott	Philadelphia, Pa	2,000
Geo. L. Littlefield	Pawtucket, R. I	2,500
H. T. Lillibridge	Minneapolis, Minn.	3,000
35 Thomas Lowry	Minneapolis, Minn	10,000
Frank W. Lebdell	Troy, N. Y	1,000
Manufacturers' & Merchants' Mutual Insurance Co	Concord, N. H	1,000
Effingham Maynard	New York city	4,000
C. H. Manchester	McIndoes Falls, Vt	200
Smith D. Mackey	Jersey City, N. J	2,000
John Mason	Passumpsic, Vt	300
Fanny H. Maynard	Hanover, N. H	2,500
Emma L. Maynard	West Enosburgh, Vt	600
Drusilla H. Manson	Auburn, Me	2,500
F. S. McKinzie	Woodstock, Vt	5,000
Eliz. S. Manchester	Providence, R. I	500
Mary E. Marks	Burlington, Vt	200
B. H. Marshall	West Burke, Vt	1,500
Frank A. Merrill	Concord, N. H	500
Amanda A. Menage	Minneapolis, Minn	100
Bessie M. Menage	Minneapolis, Minn	100
Edwin F. Morse	Philadelphia, Pa	2,000
Helen Morse	St. Johnsbury Center, Vt	800
H. M. Morse	Boston, Mass	1,000
Geo. A. Morse	Philadelphia, Pa	700

	Name.	Address.	Am't stock.
	Charles H. Morse	Chicago, Ill	1,000
	Martha J. Morse	Chicago, Ill	1,000
	Bessie Owens Morse	Chicago, Ill	500
	Charles C. Munford	Providence, R. I	500
	E B. Mulford	Sag Harbor, L. I., N. Y	100
	Thomas S. McLam	Tewksbury, Mass	1,000
	Estate of Mrs E. McLeod	Montreal, P. Q	500
	Mrs. A. H. McLeod	St. Johnsbury, Vt	100
	Maud E. McLeod	St. Johnsbury, Vt	100
	James E. McDowell	Portland, Me	2,000
	William McFarland	Salem, N. Y	500
	Owen F. McCabe	Quechee, Vt	500
	Margaret C. McClaren	West Barnett, Vt	300
	Lucia E. McNeill	Shelburne, Vt	500
	Chas. J. McKenzie	Franklin, Mass	5,000
	Nettie L. Nay	Jeffersonville, Vt	300
	B. M. R. Nelson	Barton, Vt	1,000
	Nath. F. Nye	Auburndale, Mass	1,000
	Philip H. Neher	Troy, N. Y	7,500
	Neher & Carpenter	Troy, N. Y	2,600
	Mrs. J. W. Nickerson	Sag Harbor, L. I., N. Y	500
	L. P. Norton	Bennington, Vt	1,000
	William H. Noyes	Liberty Hill, Conn	1,000
	John M. Norris	Minneapolis, Minn	8,500
	C. H. Olmstead	Boston, Mass	2,000
	Orleans Trust Co	Newport, Vt	10,000
	E. G. Parker	Wells River, Vt	3,000
36	William S. Palmer	Norwichtown, Conn	400
	A. D. Page	Lyndonville, Vt	600
	Howard S. Paine	Albany, N. Y	1,000
	Sarah Potter Paine	Albany, N. Y	1,000
	Louisa J. Prescott	East Jaffray, N. H	300
	Julius E. Prescott	East Jaffray, N. H	500
	Harriet M. Perry	Claremont, N. H	100
	Sarah A. Perkins	Boston, Mass	1,000
	Curtis H. Pettit	Minneapolis, Minn	1,000
	Anna M. Penniman	Boston, Mass	500
	Willie E. Prescott	East Jaffray, N. H	200
	John B. Peckett	Bradford, Vt	2,000
	Charles P. Peret	Philadelphia, Pa	1,200
	Penn. Co. for Ins. on Lives and Granting Annuities, trustee for Mary Anna Gazzam, under will of John G. Reading, deceased	Philadelphia, Pa	5,000
	F. T. Perkins	Burlington, Vt	1,200
	Geo. H. Perkins	Burlington, Vt	500
	Mary K. Perot	Philadelphia, Pa	500
	Chas. W. Pickering	Greenland, N. H	300
	Geo. A. Pillsbury	Minneapolis, Minn	4,000
	The Philadelphia Trust, Safe Deposit and Ins. Co., trustee for Mary Anna Gazzam, under will of John G. Reading, deceased	Philadelphia, Pa	5,000
	Edward G. Pittman	Troy, N. Y	1,500
	W. N. Potter	Boston, Mass	1,000
	C. A. Prouty	Newport, Vt	2,000
	James H. Porter	Lebanon Center, Me	1,000
	Charles H. Raney	Swanton, Vt	1,300
	Walter A. Read	Chepachet, R. I	5,000
	Caleb S. Ridgway	Philadelphia, Pa	1,000
	A. J. Richardson	Philadelphia, Pa	2,000
	Samuel Ricker	Boston, Mass	1,000
	Mary A. Ripley	Portland, Me	2,200
	Geo. C. Ripley	Minneapolis, Minn	1,000
	Katharine F. K. Rix	Royalton, Vt	2,500

	Name.	Address.	Am't stock.
	Abram T. Rose	Bridgehampton, L. I., N. Y.	1,000
	Homer E. Royce	St. Albans, Vt	2,000
	Hiram S. Rogers	Sagg Bridgehampton, L. I., N. Y	600
	Robert M. Roive	Newport, N. H.	500
	Franklin B. Rogers	Boston, Mass	800
	Nancy B. Rose	Bridgehampton, L. I., N. Y.	200
	Abigail Rodman	Philadelphia, Pa	300
	William H. Rowe	Troy, N. Y	1,000
	Mrs. J. R. Roblin	Bethel, Vt	500
	Florence P. Robison	Minneapolis, Minn	1,000
	Charles W. Ruiter	St. Johnsbury, Vt	200
37	Chas. H. Sprague, trustee	Providence, R. I.	1,000
	J. Bunford Samuel	Philadelphia, Pa	2,000
	Mary J. Sanborn	Lyndon, Vt	1,000
	Joel F. Sanborn	Lyndon, Vt	1,000
	Mrs. N. C. Sanborn	Lyndon, Vt	2,000
	W. J. Stanton, Jr	Lyndon, Vt	500
	Walter R. Shaefer	Philadelphia, Pa	200
	Charles M. Swain	Philadelphia, Pa	1,000
	Hettie T. Sprague	Providence, R. I	1,100
	Henry S. Sprague	Providence, R. I	1,000
	Samuel S. Sprague	Providence, R. I	1,000
	John Stanton	Troy, N. Y	1,500
	Wesley Sargent	St. Johnsbury Center, Vt	2,000
	Minnie E. Stenson	New York city	500
	Geo. W. B. Snell	Portland, Me	100
	Mary E. Shed	Hillsborough Bridge, N. H.	1,000
	Anna K. Sheldon	Troy, N. Y	1,000
	Wm. B. Stevens	Bradford, Vt	500
	Henry Smilee	Waterville, Vt	2,000
	Nellie S. Baker Smith	Charlestown, N. H	2,000
	Walter P. Smith	St. Johnsbury, Vt	500
	Susan H. Smith	St. Johnsbury, Vt	500
	Mary L. Smith	New York city	500
	Isaac B. Smith	East St. Johnsbury, Vt	1,000
	Fred E. Smith	Montpelier, Vt	500
	William J. Simmons	Troy, N. Y	3,000
	James F. Shipman	Waterbury, Vt	200
	J. Elliott Smith	New York city	1,000
	Charles J. Shoemaker	Philadelphia, Pa	100
	Carrie M. Story	Manchester, N. H	1,500
	A. C. Stocking	Boston, Mass	300
	Jos. C. Snow	Haverhill, Mass	3,000
	Melanie M. Stussy	Philadelphia, Pa	900
	Thomas Stuart	Concord, N. H	2,500
	Elbra S. Taggart	Manchester, N. H	1,500
	A. P. Taft	St. Johnsbury, Vt	1,000
	E. D. Thayer	Brandon, Vt	1,000
	Charles S. Tanner	Providence, R. I	500
	James M. Tyler	Brattleboro, Vt	500
	Almira C. Titus	Providence, R. I	2,300
	J. O. Tilton	Lexington, Mass	500
	Jeremiah D. Tilton	Tilton, N. H	1,000
	Jno. C. Tilton	Concord, N. H.	100
	Stephen H. Tilden	West Lebanon, N. H	800
	H. J. Town	Los Angeles, Cal	900
	Geo. R. Thompson	Rupert, Vt	300
	William Tooth	New York city	2,500
	Mrs. A. G. Thompson	Pittsfield, N. H.	200
	Martha Towle	Burlington, Vt.	500
38	Geo. Towle	Burlington, Vt.	500
	Walter V. Towle	Burlington, Vt.	100
	Mrs. Geo. Towle	Amsterdam, N. Y.	200
	Hon. Payson Tucker	Portland, Me.	2,500

Name.	Address.	Am't stock.
Richard Tull	Philadelphia, Pa	300
L. A. Tuxbury	Saco, Maine	1,000
George Turner	Waterford, N. Y	1,000
Cyrus Underwood	East Hardwick, Vt	7,600
Edwin Underwood	St. Johnsbury, Vt	30,000
Geo. M. Vail	Riverhead, L. I., N. Y	200
Charles T. Walter	St. Johnsbury, Vt	100
Mary L. Watson	Montpelier, Vt	1,000
Samuel W. Wray	Philadelphia, Pa	2,000
Mary E. Ward	Brookline, Mass	2,500
Geo. W. Wagg	Auburn, Me	2,500
W. D. Washburn	Minneapolis, Minn	1,000
Alfred E. Watson	Hartford, Vt	1,000
Josiah A. Wait	Troy, N. Y	3,000
R. C. Waite	St. Albans, Vt	500
Charles W. West	Philadelphia, Pa	2,000
Edward G. West	Philadelphia, Pa	2,000
Albert B. Weimer	Philadelphia, Pa	100
Rebecca H. Weld	Lebanon Center, Me	1,000
Gardner Wetherbee	New York city	5,000
Oren Westcott	Providence, R. I	1,000
H. T. Wetherby	Burlington, Vt	1,000
Henry L. Wetherby	Jeffersonville, Vt	800
E. M. Weston	Bethel, Vt	200
Charles F. Wignall	Philadelphia, Pa	500
J. F. Wright	Barton Landing, Vt	2,000
Sara C. Wilkes	Brewsters, N. Y	400
Austin Wright	Claremont, N. H	100
Charles H. Wilson	Lyndonville, Vt	1,000
Squire J. Wilson	Lyndonville, Vt	400
Calvin Wilcox	Derby Line, Vt	1,000
Alpheus Wilt	Philadelphia, Pa	2,000
Mary Wilt	Philadelphia, Pa	2,000
Helen G. Williamson	Troy, N. Y	1,000
Mrs. S. L. Wiswill	Cabot, Vt	500
Florence Wilson	Philadelphia, Pa	1,000
Mrs. D. Q. Woodruff	St. Johnsbury, Vt	100
Irving S. Woodruff	St. Johnsbury, Vt	100
Horace N. Woodruff	St. Johnsbury, Vt	100
Rawson L. Wood	New York city	2,000
B. W. Woodard	Boston, Mass	2,000
H. E. & D. Q. Woodruff	St. Johnsbury, Vt	2,000
William J. Wyley	Troy, N. Y	500
W. A. Wheeler	Littletown, N. H	500
		$1,250,000

39 And plaintiff further says, that the defendants mentioned in said action as Estate of William Breck, George B. Davis and Phil. T. Walker, executors, W. T. Emerson, guardian, Estate of Stephen Emigh; George B. Ford, cashier, W. H. Harrison, agent, Estate of Mrs. Caroline B. Hadley, Amy F. Hall, administratrix, Mary C. Lawrence, and P. J. Farrell, administrators, Estate of Mrs. E. McLeod, Neher & Carpenter, Penn. Company for Life Insurance and Lives and Granting Annuities, trustee for Mary Ann Gazzam, under will of John G. Reading, deceased, The Philadelphia Trust, Safe Deposit and Ins. Co., trustee for Mary Ann Gazzam, under will of John G. Reading, deceased, are as fully described as can be done by the plaintiff with the knowledge he how possesses, and that a more particular description of the real true names of said defendants, or either or any of them, the plaintiff cannot now give. That

the stock alleged in said complaint as belonging to said defendants last above named appears from the books and records of the Northwestern Guaranty Loan Company to be in the name of and to belong to said defendants as above designated, and the plaintiff has no knowledge or information that it belongs to any other person or persons; and the plaintiff asks that when the true names of said defendants or the persons owning said stock shall become known, the summons and complaint herein may be amended by inserting such names in the summons and complaint herein.

VI.

That all said defendants, except the following named, to wit: W. S. Streeter, L. F. Menage and W. S. Streeter, trustees; Ben. S. Benton, F. R. Chase, William G. Crocker, N. Stanton Coffin, Carrie L. Dean, Alfred J. Dean, Elizabeth Dean, William E. Dean, Fred W. Dean, George F. Dean, Loren Fletcher and Charles M. Loring, as partners as L. Fletcher & Co.; H. T. Lillibridge, Thomas Lowry, John M. Norris, Curtis H. Pettit, George A. Pillsbury, George C. Ripley, Florence P. Robison, and W. D. Washburn, now are non-residents of the State of Minnesota and have no property of any kind subject to levy on execution within this State, and the plaintiff has no means of getting jurisdiction over them in this action.

That of the said indebtedness of three million dollars, more than twelve hundred thousand dollars has already been proven against said estate of said Northwestern Guaranty Loan Company, and due proof thereof filed with said receiver, as in such case made and provided by the general insolvency laws of this State.

VII.

Plaintiff further alleges that all of the defendants, except the defendants The Northwestern Guaranty Loan Company and Minneapolis Trust Company, are in law personally liable for the debts of said defendant Northwestern Guaranty Loan Company, to the amount of stock as aforesaid, owned by each of them; that in order to collect the amounts due respectively from said defendant stockholders and to enforce the liability of the non-resident defendant stockholders of said defendant The Northwestern Guaranty Loan Company, it is necessary that a receiver for such purpose be, by this court, appointed; that the defendant Minneapolis Trust Company, the receiver of said Northwestern Guaranty Loan Company, is a proper and suitable person to act as such receiver.

Wherefore, the plaintiff prays:

First. That the court decrees notice to be given in such manner as shall be deemed best, requiring all the creditors of said defendant, Northwestern Guaranty Loan Company, to exhibit their respective claims against the said Northwestern Guaranty Loan Company herein, and to become parties to this action within a reasonable time, and that they, in default thereof, be precluded from all benefit under the judgment which may be rendered in this action and from any distribution which shall be made under said judg-

ment herein; that thereupon the court proceed to ascertain the amounts of the respective claims of such creditors of said defendant Northwestern Guaranty Loan Company, who shall become parties to this action, as well as the respective liabilities of said defendant stockholders, on account of their constitutional liability, and the amount of stock held and owned by them and each of them. And plaintiff further prays that a proper judgment and decree be entered and rendered herein against said defendant stockholders and each of them, for such liabilities as shall be warranted by the law and the evidence, and providing for the enforcement and sequestration of said liabilities, to the end that from the proceeds therefrom the attorneys' fees and the cost of this proceeding be paid in full, and that said claims of said creditors be satisfied *pro tanto*.

Second. That the Minneapolis Trust Company, or some other competent and suitable person, be appointed receiver herein, for the purpose of collecting and enforcing such liabilities, and with power and authority to proceed against said defendant stockholders residing in other jurisdictions, in such other jurisdictions, for the purpose of enforcing their liabilities in behalf of all the creditors who shall become parties to this action, and with further power and authority to distribute the proceeds in this proceeding, between the parties entitled thereto, after first paying in full out of said proceeds such reasonable sum as shall by the court be allowed this plaintiff for compensation for his attorneys for their services in this proceeding, as well as for all other costs and expenses herein incurred, not taxable against said defendants.

Third. That by a proper judgment and decree herein, all creditors of said defendant The Northwestern Guaranty Loan Company, who have not within the time fixed by the court herein, exhibited their claims herein and become parties to this action, be forever debarred from any and all benefits of the judgment herein, and from any distribution to be made under the same.

Fourth. Plaintiff prays for such other and further relief herein as to the court shall seem meet and proper, just and agreeable with equity and good conscience, including judgment for his costs and disbursements herein.

W. E. HALE,
Attorney for Plaintiff, 926–'34 *Guaranty Loan Bldg.*,
Minneapolis, Minn.

Dated Feb. 19, 1894.

41 EXHIBIT "A."

Articles of Incorporation of the Northwestern Guaranty Loan Company.

Know all men by these presents that we, the undersigned, under and pursuant to the laws of the State of Minnesota, to wit: title two (2), of chapter thirty-four (34), of the General Statutes of said State, do hereby associate ourselves together for incorporation under the name hereinafter assumed, and organize by adopting and signing the following articles of incorporation, to wit:

ARTICLE FIRST.

The name of this corporation shall be Northwestern Guaranty Loan Company. The general nature of its business shall be the buying, owning, improving, mortgaging, selling and dealing in lands, tenements and hereditaments, real, mixed and personal estate and property; the buying, owning, holding, selling, negotiating, dealing in, and guaranteeing, and otherwise securing mortgages, notes and other securities and evidences of indebtedness, and doing and performing any and all such lawful business and undertakings as may be necessary, essential or expedient to the proper and efficient carrying on and success of the several kinds of business above named. The principal place of transacting said business shall be at the city of Minneapolis, in the county of Hennepin, and State of Minnesota.

ARTICLE SECOND.

The time of the commencement of said corporation shall be the first (1st) day of May, A. D. 1884, and the period of its continuance shall be thirty (30) years.

ARTICLE THIRD.

The amount of capital stock of said corporation shall be two million dollars ($2,000,000), of which sum two hundred thousand dollars ($200,000) shall be paid in at the time of the commencement of business by said corporation, and the remainder whenever and in such installments as the board of directors of said corporation shall determine.

ARTICLE FOURTH.

The highest amount of indebtedness or liability to which said corporation shall at any time be subject shall be fifty thousand dollars ($50,000).

ARTICLE FIFTH.

The names and places of residence of the persons forming this association for incorporation are as follows, to wit: Louis F. Menage, Robert S. Innes, Benjamin S. Bull, Sewell P. Channell and Julius E. Miner, each and all of whom reside in the city of Minneapolis, Hennepin county, Minnesota.

42 ARTICLE SIXTH.

The names of the persons constituting the first board of directors of said corporation are Louis F. Menage, Robert S. Innes, Benjamin S. Bull, Sewell P. Channell and Julius E. Miner. The government of said corporation and the management of its affairs shall be vested in a board of directors, consisting of five persons, and in a president, two vice-presidents, a secretary and treasurer. The directors shall be elected by the stockholders of said corporation at their annual meeting in each year. The other officers shall be elected by the board of directors annually; and said board of directors may, besides

the above-mentioned officers, appoint such other officers and agents as the business of said corporation may require. The elections shall be held at such time, in each year as shall be prescribed by the by-laws of said corporation.

ARTICLE SEVENTH.

The number and amount of the shares in the capital stock of said corporation shall be twenty thousand shares of one hundred dollars.

In witness whereof we have hereunto set our hands and seals this eighteenth (18th) day of April, A. D. 1884.

LOUIS F. MENAGE. [SEAL.]
ROBERT S. INNES. [SEAL.]
SEWELL P. CHANNELL. [SEAL.]
BENJAMIN S. BULL. [SEAL.]
JULIUS E. MINER. [SEAL.]

In presence of—
P. M. WOODMAN.
W. R. CRAY.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Be it known personally came Louis F. Menage, Robert S. Innes, Benjamin S. Bull, Sewell P. Channell and Julius E. Miner, before me, the undersigned notary public, each and all of said persons to me personally known to be the identical persons named in and who executed the foregoing articles of incorporation, and each acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein expressed.

Witness my hand and official seal this 22d day of April, A. D. 1884.

[NOTARIAL SEAL.]

WILLARD R. CRAY,
Notary Public, Hennepin County, Minnesota.

OFFICE OF REGISTER OF DEEDS, }
County of Hennepin, State of Minnesota. }

I hereby certify that the within instrument was filed for record in this office on the 22d day of April, A. D. 1884, at 10.30 o'clock a. m., and was duly recorded in Book 19, of Mis., page 479, etc.

GEORGE HUHN,
Register of Deeds,
By JAMES E. MERRITT, *Deputy.*

43 STATE OF MINNESOTA, }
Department of State. }

I hereby certify that the within instrument was filed for record in this office on the 22d day of April, A. D. 1884, at 5 o'clock p. m.,

and was duly recorded in Book J of Incorporations, on pages 453, 454 and 455.

FRED VON BOMBACH,
Secretary of State.

EXHIBIT "B."

STATE OF MINNESOTA, }
County of Hennepin. }

District Court, Fourth Judicial District.

In the Matter of the Petition for a Receiver of THE NORTHWESTERN GUARANTY LOAN COMPANY under the Insolvent Act.

The petition of John Goodnow and Cora B. Lawther, as partners as Goodnow & Lawther, Minneapolis, Minnesota, creditors of the Northwestern Guaranty Loan Company, a corporation organized under the laws of this State, above named, having come on to be heard, due notice of the time and place of such hearing having been first given to said debtor, the said Northwestern Guaranty Loan Company, and also to the Northwestern Fuel Company, a corporation named in said petition, as required by an order of this court, dated May 17th, 1893, and by consent of all parties, the hearing having been continued from time to time until 9 o'clock a. m. this 20th day of May, 1893, and the said Northwestern Guaranty Loan Company having duly appeared upon said hearing by C. J. Bartleson, Esq., its attorney, and said Northwestern Fuel Company having duly appeared upon said hearing by Albert C. Cobb, Esq., its attorney, and all the parties hereto having been duly heard in the premises;

And it appearing to the satisfaction of the court that said petitioners, John Goodnow and Cora D. Lawther, as partners as Goodnow & Lawther, are creditors of the Northwestern Guaranty Loan Company, as stated in said petition, and that said petitioner's debt and claim is provable against said Northwestern Guaranty Loan Company in accordance with the provisions of the insolvency laws of this State; that the debt and claim owing to said petitioners by said Northwestern Guaranty Loan Company exceeds two hundred dollars in the aggregate amount, to wit: $371.64, all of which is now due and no part of which has ever been paid, and that the nature of said debt and claim is for goods, wares and merchandise of the value of $371.64, sold and delivered by said petitioners to said Northwestern Guaranty Loan Company at various times during the last past year;

And it also appearing to the satisfaction of the court that said Northwestern Guaranty Loan Company did on the 16th day of May, 1893, confess judgment in favor of said Northwestern Fuel Company for the sum of $213.01, and that on the 17th day of May, 1893, at about nine o'clock in the forenoon of said day, judgment was duly entered upon said confession of judgment in the district court of the fourth judicial district in and for the county of Hennepin and State of Minnesota, as and at the time alleged in said

petition, and that said judgment so rendered and entered remains wholly unpaid, unsatisfied and undischarged;

And it also further appearing to the satisfaction of the court that said Northwestern Guaranty Loan Company is wholly insolvent, and that all the allegations of said petition are true as therein alleged, and that a receiver should be appointed of all the unexempt property of said debtor, the said Northwestern Guaranty Loan Company.

It is ordered, adjudged and decreed:

First. That said debtor, The Northwestern Guaranty Loan Company be and it is hereby declared and adjudged to be insolvent.

Second. That the Minneapolis Trust Company, of the city of Minneapolis, in the county of Hennepin, and State of Minnesota, be and it is hereby appointed a receiver, who has power and authority to, and who shall take possession of all the property of said debtor, not exempt by law, including all property concealed, removed or otherwise disposed of by said debtor in violation of any provisions of chapter thirty (30), of the General Laws of Minnesota, for the Year A. D. 1889, and also all property now under garnishment, attachment or levy, except such as was levied upon under an execution issued upon a judgment against said debtor, entered on a complaint which was on file in the court in the county where said debtor then resided, during the period of at least twenty days next before the entry of such judgment, and said receiver has power and authority to, and he shall, within four months from the date hereof, unless the court or judge shall otherwise direct, and shall allow further time, convert said property into money, and distribute the net proceeds thereof ratably and in proportion to the amount of their several demands among the creditors of said debtor, who shall come in and make due proof of their respective demands within such time and in such manner as the court or judge shall direct, and who shall, in consideration of the benefit of the provisions of said chapter thirty, execute and file releases of their respective demands against said debtor as therein provided.

Third. That said receiver shall keep an account of all its doings thereunder, and report the same to this court.

Dated May 20th.

ROBERT D. RUSSELL,
District Judge.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

W. E. Hale came before me personally, and being first duly sworn, doth say, that he is the attorney for the plaintiff in the foregoing action; that he has read the foregoing amended complaint, and knows the contents thereof, and that the same is true, to the
45 best of his knowledge, information and belief, and that the reason why this affidavit of verification is not made by said plaintiff is that plaintiff is absent from said Hennepin county, wherein resideth deponent; and further saith not.

W. E. HALE.

Subscribed and sworn to before me this 19th day of February, A. D. 1894.

E. A. MONTGOMERY,
[NOTARIAL SEAL.] *Notary Public, Hennepin County, Minn.*

Endorsed: Filed Aug. 14, 1894. C. N. Dickey, clerk. By H. J. Altnow, deputy.

46 STATE OF MINNESOTA, }
County of Hennepin, }

District Court, Fourth Judicial District.

ARTHUR R. ROGERS, Plaintiff,
vs.
MINNEAPOLIS TRUST COMPANY, as Receiver of the Northwestern Guaranty Loan Company; Louis F. Menage, Edwin A. Norton; Louis F. Menage and William S. Streeter, Trustees; W. S. Streeter; J. M. Addeman, Trustee; Walter C. Rodman, Montana Trust Company, H. C. Hardon, Geo. Kiernan, H. W. Allen, Cyrus J. Anderson, Loren C. Ayer, William F. Andrews, Elizabeth A. Allen, Geo. E. Ashley, F. E. Alfred, Ella J. Ackley, D. R. Allison, W. S. Allis, E. L. Ainsley, Edward P. Allison, Gertrude Allison, L. F. Aldrich, Willis R. Armstrong, Lewis W. Anthony, C. H. Austin, W. H. Blaisdell, Addie P. Baker, C. H. Bailey, George Brainerd, Geo. P. Blair, Nettie A. Bassett, E. Baldwin, B. M. Braley, A. P. Braley, Henry Ballard, F. W. Ballard, Geo. H. Bartlett, Adeline W. Batchelder, Lydia R. Bartlett, E. C. Blanchard, George H. Bartlett, Cornelia W. Ball, Elizabeth V. Bailey; E. W. Baxter, Estate of William Breck; K. A. Benedict, Ben. S. Benton, Laurette Bingham, William R. Bridges, Addie I. Bibber, Reed B. Bontecon, W. A. Brooks, James W. Brock, Alson Brown, Fred A. Brown, Elizabeth J. Brown, Samuel N. Brown, A. A. Brooks, William Burnham, Fannie E. Buckminster, Gates B. Bullard, Albert F. Burdette, Geo. Burnham, Jr., Joseph A. Budlong, Geo. A. Buffum, Frank H. Clark; The Capital Fire Insurance Company of Concord, N. H.; Mary E. Carpenter, Harvey Carpenter, S. E. Caswell, Frank B. Carr, Maria P. Clark, William H. Clark, Isabel H. Charlton, James Clark, Helen M. Clark, F. R. Chase, James Caird, James H. Carpenter, H. Maria Capron, Albert E. Calder, Silas Carey, James E. Case, Ellis Clark, William P. Chamberlain, Mary E. Carpenter, E. A. Chittenden, W. A. Childs, Daniel Coffrin, Ellis M. Coe, Charles Cobb, John H. Converse, David Coe, A. A. Coe, Charles H. Cross, L. Bart Crose, Ira Colby, F. H. Colby, William H. Cook, William G. Crocker, Hezekiah Conant, N. Stanton Coffin, Elizabeth M. Colt, Geo. W. Cornell, James M. Crowell, Mrs. R. K. Leverett Cushman, Henry L. Cushman, J. Jay Dana, S. W. Dana, Elmer A. Darling, A. B. Darling, Wilbur P. Davis, William L. Damon, Edwin Davis, Carrie L. Dean, Alfred J. Dean, Jane V. Delano, John W. Dean, W. S. Dewey, D. C. Dennison, Elizabeth Dean, William E. Dean, Fred

W. Dean, George F. Dean, J. E. Dickerman, J. E. Dwinnell, Lucy F. Dillaway, Clara E. Dickson, H. Walter Dole, O. G. Dort, Oliver H. Durrell, Sophia G. Durrell; Geo. B. Davis and Phil T. Walker, Executors; J. L. Edwards, Nancy J. Elms, Jacob Edwards; W. T. Emerson, Guardian; Estate of Stephen Emigh, Thomas Fairbrother, Mrs. William P. Fairbanks, Edward
47 T. Fairbanks, William P. Fairbanks, Francis A. Fales, Mrs. O. F. Fassett, Amasa Fairbrother, Myron Fairbrother, Freewill Baptist Printing Establishment, The Freewill Baptist Education Society; Loren Fletcher and Charles Loring, as Partners as L. Fletcher & Co.; Anna T. Fernald; E. N. Fernald, Guardian; The Freewill Baptist Foreign Miss. Society, A. Clark Fellows; Eustace W. Fisher, Executor; The Fire Underwriters' Association, Mary F. Field, Edwin P. Fisher, Isadora C. W. Fisher, Launcelot Foster, De Forest Fox, Mrs. H. E. Folsom, W. H. Ford, Lucyett Fowler, The Galveston Trust Company, Joseph M. Gazzam, J. Herbert Gardner, William C. Gage, The Granite Savings Bank and Trust Company, Nelson M. Gay, Henry D. Gregory, George B. Greenslet, Dascon Green, J. McGregor Gibb, H. H. Gilson, E. H. Goodhue, Timoth- H. Griffing, David A. Gorton, Emiline F. Godfrey, Edward H. Gourley, E. Hiram Goodhue, Ellen M. Goodhue, J. E. Goodrich, Egbert Guernsey, Fitzedward Hall, Henry R. Halleway, Emma E. Haman; W. H. Harrison, Ag't; William Hacker, Henry Haines, Estate of Mrs. Caroline B. Hadley, Perley F. Hazen, R. W. Hardon, James R. Hall, Mabel Hall, Ammi R. Hahn, Fred S. Hall, Earl P. Hawes, John D. Hatch; Amy F. Hall, Administratrix; Mrs. E. L. Hatch, Samuel A. Hendrickson, Helena Trust Company, Ernst Hitz, William Higgins, Julia C. Higgins, Edmund F. Higgins, Alfred K. Hills, Benjamin Hinman, James I. Hilliker, Salmer P. Hibbard, Hadley F. Higgins, Clara T. Hitchcock, H. A. Hitchcock, Geo. M. Howe, Alex. Holmes, Caroline Holmes, O. O. Howard, Grace R. Houghton, S. Frank Holley, C. P. Hogan, Henry C. Howe, J. W. Hobart, C. T. A. Humphrey, Thomas L. Hutchins, John H. Husted, Melancie E. Hutchins, Harry M. Hutchins, Sterns Hutchins, Ruhamah P. Inman, Charles L. Jackman, Stephen M. Jaquith, C. H. Jones, Geo. E. Johnson, Anna Warner Johnson, C. H. Joslyn, Peter Joslyn, Keene Guaranty Savings Bank, F. L. Keay, Mary G. Kenney, Charles W. King, Robert R. Kimball, James E. Kimball, James M. Kimball, William B. Kimball, Laura B. Kimball, Geo. Kiernan, Rudolph Koradi, Marie Landon, Henry S. Lawrence, Lucia D. Lane; Mary C. Lawrence and P. J. Farrell, Administrators; Martha H. Leverett, A. L. Leach, C. N. Leonard, J. Bertram Lippincott, Geo. L. Littlefield, H. T. Lillibridge, Thomas Lowry, Frank W. Lebdell, Manufacturers' and Merchants' Mutual Insurance Company, Effingham Maynard, C. H. Manchester, Smith D. Mackey, John Mason, Fannie H. Maynard, Emma L. Maynard, Drusilla H. Manson, E. S. Mackinzie, Eliz. S. Manchester, Mary E. Marks, B. H. Marshall, Frank A. Merrill, Amanda A. Menage, Bessie M. Menage, Edwin F. Morse, Helen Morse, H. M. Morse,

Geo. A. Morse, Martha J. Morse, Bessie Owens Morse, Charles C. Munford, E. B. Munford, Thomas S. McLam, Estate of Mrs. E. McLeod, Mrs. A. H. McLeod, Maud E. McLeod, James McDowell, William McFarland, Owne F. McCabe, Margaret C. McLaren, Lucia E. McNeil, Charles J. McKenzie, Nettie L. Nay, B. M. R. Nelson, Nath. F. Nye, Philip N. Neher, Neher & Carpenter, Mrs. J. W. Nickerson, L. P. Norton, William H. Noyes, John M. Norris, C. H. Olmstead, Orleans Trust Company, E. C. Parker, William S. Palmer, A. D. Paige, Howard S. Paine, Sarah Potter Paine, Louisa J. Prescott, Julius E. Prescott, Harriet M. Perry, Sarah A. Perkins, Curtiss H. Pettit, Anna M. Penniman, Willie E. Prescott, John H. Peckett, Charles P. Peret, Pennsylvania Company for Insurance on Lives and Granting Annuities, Trustee for Mary Anna Gazzam under Will of John G. Reading, Deceased; F. T. Perkins, Geo. H. Perkins, Mary K. Perot,
48 Charles W. Pickering, Geo. A. Pillsbury, The Philadelphia Trust, Safe Deposit and Insurance Company, Trustee for Mary Anna Gazzam under Will of John G. Reading, Deceased; Edward G. Pittman, W. N. Potter, C. A. Prouty, James H. Porter, Charles H. Raney, Walter A. Read, Caleb S. Ridgway, A. J. Richardson, Samuel Ricker, Mary A. Ripley, Geo. C. Ripley, Catharine F. K. Rix, Abram T. Rose, Homer E. Royce, Hiram S. Rogers, Robert M. Roive, Franklin B. Rogers, Nancy B. Rose, Abigail Rodman, William H. Rowe, Mrs. J. R. Roblin, Florence P. Robinson, Charles W. Ruiter, Chas. H. Sprague, Trustee; J. Bunford Samuel, Mary J. Sanborn, Joel F. Sanborn, Mrs. N. C. Sanborn, W. J. Stanton, Jr.; Walter S. Shaefer, Charles M. Swain, Hettie T. Sprague, Henry S. Sprague, Samuel S. Sprague, John Stanton, Wesley Sargent, Minnie E. Stenson, Geo. W. B. Snell, Mary E. Shed, Anna K. Sheldon, Wm. B. Stevens, Henry Smilee, Nellie S. Baker Smith, Walter P. Smith, Susan H. Smith, Mary L. Smith, Isaac B. Smith, Fred E. Smith, William J. Simmons, James F. Shipman, J. Elliot Smith, Charles J. Shoemaker, Carrie M. Story, A. C. Stocking, Jos. C. Snow, Melanie M. Stussy, Thomas Stuart, Elbra S. Taggart, A. P. Taft, E. D. Thayer, Charles S. Tanner, James M. Tyler, Almira O. Titus, J. O. Tilton, Jeremiah D. Tilton, Jno. O. Tilton, Stephen H. Tilden, H. J. Towne, Geo. R. Thompson, Martha Towle, George Towle, Walter V. Towle, Mrs. Geo. Towle, Payson Tucker, Richard Tull, L. A. Tuxbury, George Turner, Cyrus Underwood, Edwin Underwood, Geo. M. Vail, Charles T. Walker, Mary L. Watson, Samuel W. Wray, Mary E. Ward, Geo. Wagg, W. D. Washburn, Alfred E. Watson, Josiah A. Wait, R. C. Waite, Charles W. West, Edward G. West, Albert B. Weimer, Rebecca H. Weld, Gardner Wetherby, Oren Westcott, H. T. Wetherby, Henry L. Wetherby, E. M. Weston, Charles F. Wignall, J. F. Wright, Sara C. Wilkes, Austin Wright, Charles H. Wilson, Squires J. Wilson, Calvin Wilcox, Alpheus Wilt, Mary Wilt, Helen G. Williamson, S. L. Wiswell, Florence Wilson, D. Q. Woodruff, Irving S. Woodruff, Horace N. Woodruff, Rawson L. Wood, B. W. Woodward, H. E. and D. Q. Woodruff, William J.

Wyley, W. A. Wheeler, and Northwestern Guaranty Loan Company, Defendants.

49 This action having been placed upon the general term calendar of this court for trial, came on for hearing before the court, without a jury, on this 9th day of July, A. D. 1895; and it appearing to the court that the defendants, Northwestern Guaranty Loan Company and Minneapolis Trust Company, as receiver of the Northwestern Guaranty Loan Company, William D. Washburn; Thomas Lowry; W. S. Streeter, trustee; W. S. Streeter, individually; Benjamin S. Benton; F. R. Chase; Wm. G. Crocker; N. Stanton Coffin; Carrie L. Dean; Alfred J. Dean; Elizabeth Dean; William E. Dean; Geo. F. Dean; L. Fletcher & Co.; H. F. Lillibridge; John M. Norris; Curtis H. Pettit; Geo. A. Pillsbury; Geo. C. Ripley and Florence P. Robinson, were at the time of the commencement of this action, and now are residents of the State of Minnesota, and were all personally served with the summons in this action more than six months prior to the time when said action was placed for trial upon the said calendar of this court; and that the said defendants, Wm. D. Washburn, Thomas Lowry, Carrie L. Dean, Alfred J. Dean, Elizabeth Dean, Wm. E. Dean, Fred W. Dean, Geo. F. Dean, H. F. Lillibridge, John M. Norris. Geo. C. Ripley, have duly answered the complaint in this action, and that the other defendants, Northwestern Guaranty Loan Company and Minneapolis Trust Company, as receiver of the Northwestern Guaranty Loan Company, W. S. Streeter, trustee, W. S. Streeter, individually, Benjamin S. Benton, F. R. Chase, Wm. G. Crocker, N. Stanton Coffin, L. Fletcher & Co., Curtis H. Pettit, Geo. A. Pillsbury, and Florence P. Robinson, have not answered or demurred to said complaint, but are in default, and are so declared to be; it also appearing to the court that since the commencement of this action the defendant, H. F. Lillibridge, has become deceased, and that by an order of the court, duly and properly made herein, Cynthia A. Lillibridge administratrix of his estate, has been substituted as defendant herein in the place of said H. F. Lillibridge, deceased, and as such administratrix, and in pursuance of said order, has duly appeared and filed an answer herein, and appeared by her counsel in the trial of this case; the other defendants, so as aforesaid answering said complaint, duly appeared by their respective counsel upon the trial of this case and took part therein; it also appearing to the court that on the 4th day of January, A. D. 1894, an order was made herein, in pursuance of section 5911, chapter 76 of the General Statutes of 1894, requiring notice to be published, once in each week for six successive weeks, in the Register, a newspaper printed and published in said Hennepin county and State of Minnesota, and that the order should be considered as the notice and when so published should in all things be deemed sufficient notice to all of said creditors, and said order required that all creditors of the above-named defendant, Northwestern Guaranty Loan Company, be required, within six months after the first publication of the order, to exhibit their claims against the said defendant, Northwestern Guaranty Loan Company, and become

parties to this action, and in default thereof they be precluded and debarred from all benefits of the judgment which should be rendered in this action, and from any distribution which should be made under or upon said judgment, and said order also required that said claims should be exhibited by delivering to the clerk of said district court, at his office at the court-house in the city of Minneapolis, in said county, verified complaints entitled in this action, setting out a brief description of said claims, and all said complaints so delivered to said clerk, should be filed by him in this action, and said order also provided that any of the parties to this action, and any of the creditors of said defendant, or if a re-
50 ceiver should be appointed herein, said receiver might within any time within twenty days thereafter, by a duly verified answer interpose objections to the allowance of any claims so exhibited, which said answer should be delivered to the said clerk and filed by him in his said office, and a copy of the same to be served by the party so answering upon the attorney for the claimant, whose claims should be so objected to; and it duly appearing to the court upon the trial of this action that said order had been duly and legally published as required thereby, the first publication being made on the 6th day of January, A. D. 1894, and continuously once in each week thereafter for six successive weeks; and it also appearing to the court that in pursuance of the order, so as aforesaid made and published, a large number of the creditors of the defendant, Northwestern Guaranty Loan Company, about eight hundred in all, appeared in this action, and filed their complaints as required by said order, and that no objections, answers or demurrers to said complaint have been made or interposed; that the aggregate of said claims amount to about two million five hundred and forty-three thousand six hundred and eighty-nine and $\frac{29}{100}$ dollars ($2,543,689.29); most of the parties so intervening and filing said complaints appeared upon the trial of this action by their respective counsel and took part in the trial thereof. The court then proceeded to the trial and determination of the issues in said action; W. E. Hale, Esq., appearing as counsel for the plaintiff herein, and after hearing the evidence introduced in said action, and after hearing counsel for the various parties herein, and the case having been submitted to the court for its determination upon the evidence introduced, and the court now being fully advised as to a part of the matters and things in issue in said action, finds as conclusions of law and fact, as follows:

As Findings of Fact.

That the defendant, Northwestern Guaranty Loan Company, now is, and during all the time since the 1st day of May, A. D. 1884, has continued to be, a corporation duly organized under and pursuant to title two of chapter thirty-four, of the General Statutes of 1878, of the State of Minnesota, and the amendments thereto; that a copy of the articles of incorporation adopted by said Northwestern Guaranty Loan Company at the time it was so incorporated, and under which

it continued to act, is attached to the complaint in this action, marked "Exhibit A."

That on the 5th day of August, 1884, and on the 27th day of January, 1888, said articles of incorporation were duly amended as alleged in said complaint.

That said defendant, Minneapolis Trust Company, now is, and for several years prior to the time of the commencement of this action had continued to be, a corporation duly organized under and pursuant to the general laws of the State of Minnesota, and as such said corporation duly authorized and empowered to act as receiver, or assignee, in insolvency proceedings under the law relating to insolvent debtors and insolvency proceedings in this State.

That on the 20th day of May, 1893, said defendant, Northwestern Guaranty Loan Company, was, and now is, insolvent; that in insolvency proceedings pending in this court, on said 20th day of May, 1893, said Northwestern Guaranty Loan Company was duly adjudged by the district court of the fourth judicial district, in and for the county of Hennepin and State of Minnesota, to be insolvent; and under and pursuant to the general laws of the State of Minnesota, relating to assignments and insolvency proceedings for
51 the benefit of creditors, and for the appointment of receivers, said Minneapolis Trust Company was duly appointed the receiver of said Northwestern Guaranty Loan Company; that a true copy of the order making such appointment is attached to the complaint herein, marked "Exhibit B."

That thereafter, and on the said 20th day of May, 1893, said Minneapolis Trust Company accepted the appointment of said receivership, duly qualified and entered upon its duties as such said receiver, has ever since continued to be, and now is, such said receiver.

That as such receiver of the insolvent Northwestern Guaranty Loan Company, said Minneapolis Trust Company, immediately, after it had accepted the trust as aforesaid, and duly qualified as such said receiver, took possession of and still holds all the property and effects in any way theretofore belonging to said Northwestern Guaranty Loan Company; that said Minneapolis Trust Company as such said receiver is joined as a party defendant to this action, by leave of said district court first had and obtained, and that by the order of said district court, in and for said Hennepin county, leave has been duly given and granted the plaintiff to commence an action against the Minneapolis Trust Company, as such receiver of the Northwestern Guaranty Loan Company.

That said defendants, Montana Trust Company, and Helena Trust Company, now are, and for more than one year prior to the time of the appointment of said Minneapolis Trust Company as receiver, have continued to be, corporations duly organized and existing under and by virtue of the laws of the State of Montana.

That said defendants, The Capital Fire Insurance Company, The Underwriters' Association, Keene Guaranty Savings Bank, and Manufacturers' and Merchants' Mutual Insurance Company, now are corporations duly organized and existing under and by virtue of the laws of the State of New Hampshire.

That said defendants, Freewill Baptist Printing Establishment, The Freewill Baptist Education Society, The Freewill Baptist Foreign Missionary Society, now are, and during all the time mentioned in said complaint, have continued to be, corporations duly organized and existing under and pursuant to the laws of the State of Massachusetts.

That said defendants, The Granite Savings Bank and Trust Company, and Orleans Trust Company, now are, during all the time mentioned in said complaint, have continued to be, corporations duly organized and existing under and pursuant to the laws of the State of Vermont.

That said defendant, The Galveston Trust Company, now is, and during all the time mentioned in said complaint, has continued to be, a corporation duly organized and existing under and pursuant to the laws of the State of Texas.

That said defendants, Loren Fletcher and Charles M. Loring, now are, and during all the time mentioned in said complaint, have continued to be partners in business, under the firm name of L. Fletcher & Co.

That on the 3d day of October, 1893, in an action then pending in the supreme court, of the State of Minnesota, between L. Kimball Printing Company, respondent, and Northwestern Guaranty Loan Company, appellant, a judgment was duly obtained and entered by and in favor of said L. Kimball Printing Company, and against said Northwestern Guaranty Loan Company, for the sum of forty-six dollars ($46), as the costs and disbursements of said respondent, in said supreme court, in said action.

52 That thereafter and on the 18th day of October, 1893, a transcript of said judgment was duly filed and docketed in the office of the clerk, of the district court, in and for Hennepin county, Minnesota.

That thereafter and on the 18th day of October, 1893, such proceedings were further duly had in said supreme court, that a writ of execution was on said judgment duly issued out of and under the seal of said supreme court, in the usual form, and on the same day, delivered to the sheriff of Hennepin county, whereby said sheriff was commanded to satisfy said judgment out of any property of said Northwestern Guaranty Loan Company, within his said county, not exempt by law.

That thereafter and on the same day, said sheriff duly returned said writ of execution wholly unsatisfied.

That prior to the commencement of this action, and on the 18th day of October, 1893, said judgment for forty-six dollars ($46) aforesaid, was duly assigned to said plaintiff, Arthur R. Rogers, for a valuable consideration, by said L. Kimball Printing Company, and said assignment was duly filed in the office of the clerk of said district court, on the 18th day of October, 1893.

That said plaintiff then became, has ever since continued to be, and now is the owner of said judgment, and that no part of the same has ever been paid or satisfied.

That said Northwestern Guaranty Loan Company, was, at the

time of the entry of said judgment in said supreme court of the State of Minnesota, and at the time of docketing the same in the district court, in and for said Hennepin county, ever since has been, and now is, wholly and hopelessly insolvent, and has no property or means of any kind whatsoever, which may be levied upon or attached, or which may be reached by any writ, order or process of this court, or otherwise, and from which said judgment might have been or may now be satisfied, either in whole or in part; and that said defendant, Northwestern Guaranty Loan Company, has no property or assets whatsoever, but that all the property and assets of every kind and nature heretofore owned by said defendant, Northwestern Guaranty Loan Company, are now in the hands of the Minneapolis Trust Company, as receiver, aforesaid, of the Northwestern Guaranty Loan Company; and that the real value of the said assets cannot now be definitely determined upon the trial of this action.

That the capital stock of said Northwestern Guaranty Loan Company, according to said articles of incorporation was two million dollars, which was divided into twenty thousand shares of one hundred dollars each. One and a quarter millions of dollars of said stock was subscribed for and issued prior to the time of the appointment of the Minneapolis Trust Company as receiver of the Northwestern Guaranty Loan Company, to wit, on the 20th day of May, 1893; and that no more than this amount of said capital stock was ever issued by said Northwestern Guaranty Loan Company. That the following-named persons, defendants in this action, now are, were at the time of the appointment of said receiver, and ever since have continued to be, stockholders of said Northwestern Guaranty Loan Company, and now own, and during all the time aforesaid have continued to own, the number of shares of capital stock of said corporation of the par value set opposite their respective names, as follows, that is to say:

53 Name.	Amount of stock.	Name.	Amount of stock.
Menage & Streeter, trustees	$4,600.	W. S. Allis, trustee	$200.
Louis F. Menage	230,800.	Mrs. E. L. Ainsley	500.
W. S. Streeter	2,000.	Edward P. Allinson	1,500.
Edwin A. Norton	120,000.	Gertrude Allinson	2,500.
J. M. Addeman, trustee	10,000.	L. F. Aldrich	2,000.
Walter C. Rodman	3,900.	Willis R. Armstrong	1,500.
Montana Trust Company	94,200.	Lewis W. Anthony	4,000.
H. C. Hardon	17,000.	O. H. Austin	1,500.
Geo. Kiernan	500.	W. H. Blaisdell	1,000.
H. W. Allen	900.	Addie P. Baker	1,800.
Cyrus J. Anderson	5,000.	C. H. Bailey	3,000.
Loren C. Ayer	400.	Geo. Brainerd	500.
Wm. Andrews, 2nd administrator of estate of William F. Andrews	5,000.	Geo. P. Blair	1,000.
		Nettie A. Bassett	700.
Elizabeth S. Allen	500.	E. Baldwin	3,000.
Geo. E. Ashley	500.	H. T. Baldwin	500.
F. E. Alfred	300.	Ellen Baldwin	1,500.
Ella J. Ackley	300.	B. W. Braley	500.
D. R. Allison	200.	A. P. Braley	500.
W. S. Allis	200.	Henry Ballard	500.
		F. W. Ballard	1,000.

Name.	Amount of stock.
Geo. H. Bartlett	$500.
Adeline W. Bachelder	10,000.
Lydia R. Bartlett	500.
E. C. Blanchard	300.
Geo. H. Bartlett	500.
Cornelia W. Ball	500.
Elizabeth V. Bailey	400.
E. K. Baxter	2,000.
Estate of William Breck	1,000.
K. A. Benedict	2,000.
Ben. S. Benton	2,000.
Mrs. Lauraette Bingham	300.
William R. Bridges	500.
Addie I. Bibber	1,700.
Reed B. Bontecou	2,500.
W. A. Brooks	500.
James W. Brock	1,000.
Allison Brown	1,000.
Fred A. Brown	500.
Elizabeth J. Brown	2,000.
Samuel N. Brown	1,500.
A. A. Brooks	500.
William Burnham	2,000.
Fannie B. Buckminster	200.
Gates B. Bullard	300.
Albert F. Burdett	1,000.
Geo. Burnham, Jr.	2,000.
Joseph A. Budlong	5,000.
Geo. A. Buffum	2,000.
Frank H. Clark	500.
The Capital Fire Insurance Company	1,000.
Mary E. Carpenter	500.
Harvey Carpenter	1,000.
Mrs. S. E. Caswell	500.
Frank B. Carr	400.
Maria P. Clark	800.
William H. Clark	2,500.
Isabell H. Charlton	400.
James Clark	1,000.
Helen M. Clark	1,300.
F. R. Chase	16,000.
James Caird	700.
James H. Carpenter	1,600.
H. Maria Capron	1,000.
Albert L. Calder	10,000.
Silas Carey	1,000.
James B. Case	5,000.
Ellis Clark	800.
William P. Chamberlain	1,000.
Mary E. Carpenter	600.
E. A. Chittenden	300.
W. A. Childs	800.
Daniel Coffrin	500
Ellis M. Coe	2,500.
Charles Cobb	1,700.
John H. Converse	6,500.
David Coe	1,000.
Mrs. A. A. Coe	600.
54 Charles H. Cross	1,000.
L. Bart Cross	1,000.
Ira Colby	600.
F. H. Colby	1,000.
William H. Cook	200.
William G. Crocker	13,100.

Name.	Amount of stock.
Hezekiah Conant	$5,000.
N. Stanton Coffin	1,000.
Elizabeth M. Colt	1,000.
Geo. W. Cornell	1,000.
James M. Crowell	3,000.
Mrs. K. R. Leverett Cushman.	800.
Henry L. Cushman	2,000.
J. Jay Dana	1,300.
S. W. Dana	1,400.
Elmer A. Darling	5,000.
A. B. Darling	5,000.
Wilbur P. Davis	200.
William L. Damon	500.
Edwin Davis	300.
Carrie L. Dean	2,500.
Alfred J. Dean	6,200.
Jane V. Delano	700.
John W. Dean	800.
W. S. Dewey	1,000.
J. J. Dewey	1,000.
D. C. Dennison	500.
Elizabeth Dean	200.
William E. Dean	200.
Fred W. Dean	200.
George F. Dean	200.
J. E. Dickerman	1,000.
J. E. Dwinnell	500.
Lucy F. Dillaway	500.
Clara E. Dickson	500.
William M. Dickson	700.
John C. Dickson	1,000.
H. L. Dickerman	500.
Walter Dole	500.
O. G. Dort	1,000.
Oliver H. Durrell	2,000.
Sophia G. Durrell	500.
Geo. B. Davis and Phil. T. Walker, executors	500.
J. L. Edwards	1,500.
Nancy J. Elms	300.
Jacob Edwards	5,000.
W. T. Emerson, guardian	500.
Estate of Stephen Emigh	10,000.
Thomas Fairbrother	4,000.
Mrs. William P. Fairbanks	3,000.
Edward T. Fairbanks	2,500.
William P. Fairbanks	1,500.
Francis A. Fales	5,000.
Mrs. O. F. Fassett	3,000.
Amasa Fairbrother	1,800.
Myron Fairbrother	1,700.
Freewill Baptist Printing Establishment	2,000.
The Freewill Baptist Education Society	1,600.
L. Fletcher & Co	1,000.
Anna T. Fernald	600.
E. N. Fernald, guardian	800.
The Freewill Baptist Foreign Missionary Society	1,000.
A. Clark Fellows	3,000.
Eustace W. Fisher, executor	3,000.
The Fire Underwriters' Association	500.
Mary F. Field	1,000.

Name.	Amount of stock.
Edwin P. Fisher	$100.
Isadora C. W. Fisher	500.
Launcelot Foster	200.
De Forest Fox	7,500.
Mrs. H. E. Folsom	200.
W. H. Ford	200.
H. R. Flower	1,300.
Sophia Flower	300.
Rufus S. Frost	1,000.
Albert G. Flower	500.
Geo. B. Ford	500.
J. M. Foss	5,000.
Marietta A. Ford	300.
Lucyett Fowler	1,700.
The Galveston Trust Company	11,000.
Joseph M. Gazzam	5,000.
Z. Herbert Gardner	2,500.
William C. Gage	200.
The Granite Savings Bank and Trust Company	2,000.
Nelson M. Gay	1,000.
Henry D. Gregory	1,500.
Geo. B. Greenslet	1,000.
Dascom Green	1,000.
J. McGregor Gibb	5,000.
H. H. Gilson	500.
E. H. Goodhue	1,000.
Timothy M. Griffing	500.
55 David A. Gorton	1,000.
Emiline F. Godfrey	300.
Edward H. Gourley	400.
E. Hiram Goodhue	500.
Ellen M. Goodhue	500.
J. E. Goodrich	2,000.
Egbert Guernsey	2,000.
Fitzedward Hall	6,500.
Henry R. Halloway	100.
Emma E. Haman	300.
W. H. Harrison, agent	1,000.
William Hacker	2,500.
Henry Haines	1,000.
Estate of Mrs. Caroline B. Hadley	1,500.
Perley F. Hazen	1,000.
R. W. Hardon	100.
James R. Hall	1,000.
Mabel Hall	200.
Annie R. Hahn	2,500.
Fred S. Hall	1,000.
Earl P. Hawes	700.
Jo. D. Hatch	600.
Amy F. Hall, administratrix	500.
Mrs. E. L. Hatch	500.
Samuel A. Hendrickson	5,000.
Helena Trust Company	13,700.
Ernst Hitz	100.
William Higgins	500.
Julia C. Higgins	500.
Edmund F. Higgins	1,500.
Alfred K. Hills	1,500.
Benjamin Hinman	1,000.
James A. Hilliker	30,000.
Salmon P. Hibbard	1,000.
Hadley F. Higgins	1,000.
Clara Y. Hitchcock	800.
H. A. Hitchcock	1,000.
Geo. M. Howe	1,500.
Alex. Holmes	1,500.
Caroline Holmes	500.
O. O. Howard	200.
Grace R. Houghton	1,000.
S. Frank Holley	400.
C. P. Hogan	500.
Henry C. Howe	1,000.
J. W. Hobart	2,000.
C. T. A. Humphrey	8,000.
Thomas L. Hutchins	1,200.
John H. Husted	5,000.
Melancie E. Hutchins	700.
Harry M. Hutchins	800.
Sterns Hutchins	2,000.
Ruhamah P. Inman	2,000.
Charles E. Jackman	200.
Stephen M. Jaquith	300.
C. H. Jones	7,000.
Geo. E. Johnson	400.
Anna Warner Johnson	500.
C. H. Joslyn	1,000.
Peter Joslyn	500.
Keene Guaranty Savings Bank	5,000.
F. L. Keay	5,000.
Mary G. Kenny	2,500.
Charles W. Wing	500.
Robert R. Kimball	500.
J. E Kimball	2,500.
James M. Kimball	2,300.
William B Kimball	500.
Laura B. Kimball	700.
Mrs. Geo. Kiernan	200.
Rudolph Koradi	200.
Marie Landon	500.
Henry S. Lawrence	2,000.
Lucia D. Lane	500.
Mary C. Lawrence, P. J. Farrell, administrators estate of H. S. Lawrence	500.
Martha H. Leverett	300.
A. T. Leach	300.
C. N. Leonard	200.
J. Bertram Lippincott	2,000.
Geo. L. Littlefield	2,500.
H. F. Lillibridge	3,000.
Thomas Lowry	10,000.
Frank W. Lobdell	1,000.
Manufacturers & Merchants' Mutual Ins. Co	1,000.
Effingham Maynard	4,000.
C. H. Manchester	200.
Smith D. Mackey	2,000.
John Mason	300.
Fannie H. Maynard	2,500.
Emma L. Maynard	600.
Drusilla H. Manson	2,500.
F. S. MacKenzie	5,000.
Eliz. S. Manchester	500.
Mary E. Marks	200.
B. H. Marshall	1,500.
56 Frank A. Merrill	500.

Name.	Amount of stock.
Amanda A. Menage	$100.
Bessie M. Menage	100.
Edwin F. Morse	2,000.
Helen Morse	800.
H. M. Moore	1,000.
Geo. A. Morse	700.
Charles H. Morse	1,000.
Martha J. Morse	1,000.
Bessie Owens Morse	500.
Charles C. Mumford	500.
E. B. Mulford	100.
Thomas S. McLam	1,000.
Estate of Mrs. E. McLeod	500.
Mrs. A. H. McLeod	100.
Maud E. McLeod	100.
James E. McDowell	2,000.
William McFarland	500.
Owen F. McCabe	500.
Margaret E. McLaren	300.
Lucia E. McNeil	500.
Charles J. McKenzie	5,000.
Nettie L. Nay	300.
B. M. R. Nelson	1,000.
Nath. F. Nye	1,000.
Philip H. Neher	7,500.
Neher & Carpenter	2,600.
Mrs. J. W. Nickerson	500.
L. P. Norton	1,000.
William H. Noyes	1,000.
C. H. Olmstead	2,000.
Orleans Trust Company	10,000.
E. G. Parker	3,000.
William S. Parmer	400.
A. D. Paige	600.
Howard S. Paine	1,000.
Sarah Potter Paine	1,000.
Louisa J. Prescott	300.
Julius E. Prescott	500.
Harriet M. Perry	100.
Sarah A. Perkins	1,000.
Curtis H. Pettit	1,000.
Anna M. Penniman	500.
Willie E. Prescott	200.
John B. Peckett	2,000.
Charles P. Perot	1,200.
Penn. Co. for Ins. on Lives and Granting Annuities, trustee for Mary Anna Gazzam, under will of John G. Reading, deceased	5,000.
F. T. Perkins	1,200.
George H. Perkins	500.
Mary K. Perot	500.
Charles W. Pickering	300.
George A. Pillsbury	4,000.
The Philadelphia Trust, Safe Deposit and Ins. Co., trustee for Mary Anna Gazzam, under will of John G. Reading, deceased	5,000.
Edward G. Pittman	1,500.
W. N. Potter	1,000.
C. A. Prouty	2,000.
James H. Porter	1,000.
Charles H. Ranney	$1,300.
Walter A. Read	5,000.
Caleb S. Ridgeway	1,000.
A. J. Richardson	2,000.
Samuel Ricker	1,000.
Mary A. Ripley	2,200.
Geo. C. Ripley	1,000.
Catherine F. K. Rix	2,500.
Abram T. Rose	1,000.
Homer E. Royce	2,000.
Hiram S. Rogers	600.
Robert M. Rowe	500.
Franklin B. Rogers	800.
Nancy B. Rose	200.
Abigail Rodman	300.
William H. Rowe	1,000.
Mrs. J. R. Roblin	500.
Florence P. Robinson	1,000.
Charles W. Ruiter	200.
Charles H. Sprague, trustee	1,000.
J. Bunford Samuel	2,000.
Mary J. Sanborn	1,000.
Joel F. Sanborn	1,000.
Mrs. N. C. Sanborn	2,000.
W. J. Stanton, Jr	500.
Walter R. Schaefer	200.
Charles M. Swain	1,000.
Hettie T. Sprague	1,100.
Henry S. Sprague	1,000.
Samuel S. Sprague	1,000.
John Stanton	1,500.
Wesley Sargent	2,000.
Minnie E. Stenson	500.
Geo. W. B. Snell	100.
57 Mary E. Shed	1,000.
Anna K. Sheldon	1,000.
William B. Stevens	500.
Henry Smilee	2,000.
Nellie S. Baker Smith	2,000.
Walter P. Smith	500.
Susan H. Smith	500.
Mary L. Smith	500.
Isaac B. Smith	1,000.
Fred E. Smith	500.
William J. Simmons	3,000.
James F. Shipman	200.
J. Elliott Smith	1,000.
Charles J. Shoemaker	100.
Carrie M. Story	1,500.
A. C. Stockin	300.
Jos. C. Snow	3,000.
Melanie M. Stussy	900.
Thomas Stewart	2,500.
Elbra S. Taggart	1,500.
A. P. Taft	1,000.
E. D. Thayer	1,000.
Charles S. Tanner	500.
James M. Tyler	500.
Elmira O. Titus	2,300.
J. O. Tilton	500.
Jeremiah D. Tilton	1,000.
Jno. C. Tilton	100.
Stephen H. Tilden	800.
H. J. Town	900.

Name.	Amount of stock.	Name.	Amount of stock.
Geo. R. Thompson	$300.	Rebecca H. Weld	$1,000.
William Toothe	2,500.	Gardner Wetherbee	5,000.
Mrs. A. G. Thompson	200.	Oren Westcott	1,000.
Martha Towle	500.	H. F. Wetherby	1,000.
Geo. Towle	500.	Henry L. Wetherby	800.
Walter V. Towle	100.	E. M. Weston	200.
Mrs. Geo. Towle	200.	Charles F. Wignall	500.
Payson Tucker	2,500.	J. F. Wright	2,000.
Richard Tull	300.	Sara C. Wilkes	400.
L. A. Tuxbury	1,000.	Austin Wright	100.
Geo. Turner	1,000.	Charles H. Wilson	1,000.
Cyrus Underwood	7,600.	Squires J. Wilson	400.
Edwin Underwood	30 000.	Calvin Wilcox	1,000.
Geo. M. Vail	200.	Alpheus Wilt	2,000.
Charles T. Walter	100.	Mary Wilt	2,000.
Mary L. Watson	1,000.	Helen G. Williamson	1,000.
Samuel W. Wray	2,000.	Mrs. S. L. Wiswill	500.
Mary E. Ward	2,500.	Florence Wilson	1,000.
Geo. W. Wagg	2,500.	Mrs. D. Q. Woodruff	100.
W. D. Washburn	1,000.	Irving S. Woodruff	100.
Alfred E. Watson	1,000.	Horace N. Woodruff	100.
Josiah A. Wait	3,000.	Rawson L. Wood	2,000.
R. C. Waite	500.	B. W. Woodard	2,000.
Charles W. West	2,000.	H. E. and D. Q. Woodruff	2,000.
Edward G. West	2,000.	William J. Wyley	500.
Albert B. Weimer	100.	W. A. Wheeler	500.

None of the defendants named in the title of this case, except those heretofore named as served with the summons in the action, have been served, nor have they appeared or taken part in any of these proceedings. They are all non-residents of this State and have continued to be since the commencement of this action.

Seven or eight hundred creditors of the Northwestern Guaranty Loan Company have filed intervening complaints herein set-
58 ting up their claim against said Northwestern Guaranty Loan Company; their claims amount to about $2,543,689.29, but the exact amount which should be allowed each person cannot now be ascertained, nor can the exact value of the assets now in the hands of the Minneapolis Trust Company, as receiver of the Northwestern Guaranty Loan Company, be ascertained.

As Conclusions of Law.

The following-named defendants, as stockholders of said Northwestern Guaranty Loan Company, and over whom this court has jurisdiction are liable to the extent of the par value of the amount of stock as aforesaid owned and held by them, for the debts of said company, existing at the time of the appointment of said receiver, to wit, May 20th, 1893, after deducting the value of the assets now in the hands of said receiver, which value shall be ascertained by the court upon the further hearing of this action:

William D. Washburn; Thomas Lowry; W. S. Streeter, trustee; W. S. Streeter, individually; Benjamin S. Benton; F. R. Chase; Wm. G. Crocker; N. Stanton Coffin; Carrie L. Dean; Alfred J. Dean; Elizabeth Dean; William E. Dean; Geo. F. Dean; L.

Fletcher & Co.; H. F. Lillibridge; Curtiss H. Pettit; Geo. A. Pillsbury; Geo. C. Ripley and Florence P. Robinson.

The defendant, John M. Norris, is not and never was the owner or holder in fact of any stock owned by said Northwestern Guaranty Loan Company, but the stock alleged in the complaint to have been owned by him was in fact owned by the defendant, Louis F. Menage.

It is therefore ordered that the further hearing of this action be and the same is hereby continued to the next general term of this court, for the purpose of determining the amount of claims to be allowed herein against said Northwestern Guaranty Loan Company; also the value of the assets now in the hands of said receiver, and the exact liability of said defendant stockholders who have been served as aforesaid in this action. And for such other and further relief as may seem fit and proper. It is further ordered that a receiver be appointed herein upon five days' notice to the parties appearing in this action.

By the court,

CHARLES B. ELLIOTT, *Judge.*

Endorsed: Filed March 27, 1896. C. N. Dickey, clerk. By H. E. Johnson, deputy.

59 STATE OF MINNESOTA, }
County of Hennepin. }

District Court, Fourth Judicial District.

ARTHUR R. ROGERS, Plaintiff,
vs.
THE MINNEAPOLIS TRUST COMPANY, as Receiver of the Northwestern Guaranty Loan Company, *et als.*, Defendants.

The above-entitled action was duly brought on for hearing before this court at the general term, on the 9th day of July, 1895, and the court, having duly considered the same, made and filed its findings of fact and conclusions of law therein, wherein and whereby it was, amongst others, ordered that the further hearing of said action be continued for the purpose of determining the amount of claims to be allowed herein against said Northwestern Guaranty Loan Company, also the value of the assets in the hands of the receiver of said company; the exact liability of the defendant stockholders who had been served therein, and for such other and further relief as might seem fit and proper.

The court further made and filed its order, appointing and designating E. A. Montgomery, Esq., as referee, to classify and report all and several the claims proven in said action, together with the objections, if any, to all or any thereof, which said report has, in conformity to said order, been made and filed herein.

Pursuant to the order of continuance aforesaid, said cause came duly on for hearing at the general term of this court, before the Honorable C. B. Elliott, judge, on the 15th day of January, 1897,

upon application by the above-named plaintiff and interveners for a final decree, adjudging the amounts said plaintiff and interveners are respectively entitled to recover against said Northwestern Guaranty Loan Company, and ascertaining and fixing the amount of the liability of the several stockholder defendants, within the jurisdiction of this court, and for judgment against each thereof for the amount so ascertained, together with such further relief as might seem fit and proper in the premises.

W. E. Hale, Esq., appeared in behalf of the plaintiff and various of said interveners appeared by their respective counsel. No appearance was made by or on behalf of said defendents or any of them. The court having proceeded to hear the evidence adduced and having duly considered the same, finds therefrom, in addition to the findings heretofore made and filed herein, as follows:

I.

Findings of Fact.

That the allegations of the several intervening complaints filed herein are true.

60 II.

That the above-named defendant, Northwestern Guaranty Loan Company, on the 17th day of May, 1893, was and still is, indebted to the above-named plaintiff and the several interveners hereinafter specifically mentioned, in the sum of two million, five hundred and forty-three thousand, six hundred and eighty-nine and $\frac{29}{100}$ dollars ($2,543,689.29), according to and as fully set forth in Schedule "A" hereto attached and hereby made a part hereof, the same as though fully incorporated herein.

III.

That the total aggregate value of the assets, money or properties, including herein the entire assets of the said defendant, Northwestern Guaranty Loan Company, held by the said Minneapolis Trust Company, as receiver of said Northwestern Guaranty Loan Company, and any and all properties, moneys or funds held in trust or otherwise, applicable to the payment of the above indebtedness, is four hundred and forty thousand dollars and no more.

IV.

That the aggregate par value of all issued and outstanding stock of the defendant corporation, Northwestern Guaranty Loan Company, owned and held by the defendant in this action at the time of the appointment of the said Minneapolis Trust Company as receiver of the said Northwestern Guaranty Loan Company, as heretofore referred to and found in former findings, is one and a quarter million dollars, which is eight hundred & fifty-three thousand six hundred & eighty-nine & $\frac{28}{100}$ dollars ($853,689.28) less than the balance of

the indebtedness of said Northwestern Guaranty Loan Company, after deducting the value of the assets which might be applied toward the payment thereof.

As Conclusions of Law.

The court finds that plaintiff and the intervening creditors mentioned in Schedule "A" and attached to the findings of fact herein are entitled to judgment, adjudging and decreeing.

First. That there is due from said defendant, Northwestern Guaranty Loan Company to the plaintiff herein the sum of forty-six dollars, with interest thereon at the rate of seven per cent. per annum from the 3rd day of October, 1893.

Second. That there is due from said defendant, Northwestern Guaranty Loan Company, to each of said intervening plaintiffs herein the sum set opposite his, her or its name in said Schedule "A" hereto attached, together with interest thereon at the rate and from the time in said schedule set forth.

Third. That said plaintiff and said intervening creditors recover from each of the following-named persons, stockholders in said defendant Northwestern Guaranty Loan Company, the amount set opposite his, her or their name, respectively, as follows, to wit:

William D. Washburn	$1,000.00
Florence P. Robinson	1,000.00
61 George C. Ripley	1,000.00
George A. Pillsbury	4,000.00
Curtiss H. Pettit	1,000.00
Thomas Lowry	10,000.00
Cynthia A. Lillibridge, as executrix of the estate of H. F. Lillibridge, deceased	3,000.00
L. Fletcher & Co	1,000.00
George F. Dean	200.00
Fred W. Dean	200.00
William E. Dean	200.00
Elizabeth Dean	200.00
Carrie L. Dean	2,500.00
Alfred J. Dean	6,200.00
N. Stanton Coffin	1,000.00
William G. Crocker	13,100.00
F. R. Chase	16,000.00
Benjamin S. Benton	2,000.00
William S. Streeter, trustee	4,600.00
William S. Streeter	2,000.00

Together with the costs and disbursements.

Fourth. That for the purpose of enforcing and collecting said judgments and all thereof and any and all liabilities thereon or in anywise connected therewith, and disbursing the amounts so collected, as hereinafter provided, William E. Hale be and hereby is appointed as receiver, and upon his qualifying as such and giving

and filing with this court a good and sufficient bond, to be approved by this court, in the amount of twenty-five ($25,000) thousand dollars, said receiver be, and hereby is, authorized, empowered and directed to take any and all appropriate or necessary steps or proceedings for the purpose of collecting said judgments, and all or any thereof, and to hold the moneys and funds so collected subject to the further order of this court in the premises.

Fifth. That execution upon all or any of said judgments shall, upon the application of said receiver, be issued in the name of the above-named plaintiff and that any and all funds thereon realized shall be paid to said receiver, to be held by him and disbursed by order of this court, as hereinbefore provided.

Sixth. That out of any amounts realized by said receiver herein there be allowed and paid by said receiver to E. A. Montgomery the referee heretofore mentioned, as and for his compensation and services as such referee, the sum of three hundred ($300.00) dollars.

Seventh. That out of any amounts realized by said receiver herein there be allowed and paid to the above-named plaintiff, as and for the costs and expense by him herein incurred, the sum of three hundred and thirty and $\frac{22}{100}$ ($330.22) dollars, and a reasonable fee to plaintiff's attorney herein, W. E. Hale, Esq., which is hereby fixed and allowed in the sum of twenty-five hundred ($2,500) dollars. which allowance shall include and cover any services performed by said W. E. Hale, as receiver herein, in the collection of the judgments herein ordered against the stockholder defendants residing within this State.

62 Eighth. That said receiver herein designated and appointed be, and hereby is, directed, authorized and empowered to take any and all necessary or appropriate steps or proceedings against the non-resident stockhholders of said defendant, Northwestern Guaranty Loan Company, against whom no personal judgment herein has been ordered, for the enforcement and realization upon their stockholders' liability, and to that end said receiver be and hereby is authorized, directed and empowered to institute and prosecute all such actions or proceedings in foreign jurisdictions as may be necessary or appropriate to this end.

Ninth. That this court retain jurisdiction of this cause until adjustment of all and several the rights and liabilities of the respective parties hereto.

Let judgment be entered accordingly.

Dated February 8th, 1897.

By the court,

CHARLES B. ELLIOTT, *Judge.*

63 SCHEDULE "A."

Name of creditor.	Amount.	Rate of int.	To be computed from.
A. C. Abbott	$100.	6 %	Feb. 1, 1893
Nancy W. Ashby	500.	"	" " "
Simon Allen	500.	"	Nov. " 1892
Trustees of Abington Lodge, K. of P.	700.	"	June 1, 1893
Geo. L. Ayers	500.	"	Dec. 1, 1892
Mary L. Austin	150.	"	Jan. 1, 1893
Jennie Ayers	100.	"	Dec. 1, 1892
Elvira E. Allen	460.	"	May 1, 1893
Harriet B. Ainsworth	200.	"	M'ch 1, 1893
J. B. Ackley	200.	"	April 1, 1893
"	400.	"	May 1, 1893
Abbie H. D. Baker	50.	"	Feb. 1, 1893
J. C. Blanchard	500.	"	Jan. 1, 1893
Christopher Burch	1,200.	"	Apr. 1, 1893
Abel Brown	500.	"	M'ch 1, 1893
" "	500.	"	Dec. 1, 1893
Livonia P. Burch	250.	"	Dec. 1, 1893
Fred F. Badger	100.	"	Oct. 1, 1892
Rhoda Barker	500.	"	Feb. 1, 1893
A. W. Benton	2,000.	"	May 1, 1893
A. W. Benton, executor	2,000.	"	M'ch 1, 1893
James D. Bennett	1,000.	"	Dec. 1, 1892
"	1,000.	"	Jan. 1, 1893
"	1,000.	"	May 1, 1893
"	500.	"	Feb. 1, 1893
Carrie L. Bell	1,000.	"	Dec. 1, 1892
Sarah R. Beatty	10,000.	"	Jan. 1, 1893
Sarah D. Brownell	300.	"	Jan. 1, 1893
Ida A. Blake	200.	"	Feb. 1, 1893
James Buxton	500.	"	Dec. 1, 1892
Allison O. Blake	400.	"	Jan. 1, 1893
"	300.	"	Jun. 1, 1893
W. J. Braiseth	6,000.	"	Feb. 1, 1893
Orrin R. Burdick	300.	"	Dec. 1, 1892
W. T. Baker	1,000.	"	Dec. 1, 1892
Abram Barker	400.	"	Apr. 1, 1893
Ella J. Booth	500.	"	Jan. " "
S. C. Bates	500.	"	Jan. " "
Geo. S. Breed and Caroline M. Breed	1,000.	"	M'ch " "
Jos. Bonneville	300.	"	Feb. " "
Janette W. Burton	50.	"	May " "
" "	100.	"	Jun. " "
Anna S. Brown	1,000.	"	Apr. " "
J. D. Brown	1,250.	"	Feb. " "
J. D. Brown	1,000.	"	Apr. " "
64 Ella Burch	50.	"	M'ch 1, 1893
C. C. Binney	2,100.	"	Feb. " "
" " "	1,000.	"	Apr. 1, "
Frank Bradley	150.	"	Dec. " 1892
Fred Burch	400.	"	M'ch 1, 1893
Abel Brown	500.	"	Dec. 1, 1892
" "	500.	"	M'ch 1, 1893
S. E. Burr	1,000.	"	May " "
" " "	500.	"	Jan. " "
Jennie B. Bemis	1,000.	"	Jun. " "
Mary E. Carter	2,500.	"	Oct. " 1892
" " "	1,000.	"	Nov. " "
James B. Cone	2,000.	"	Feb. " 1893
James B. Cone, trustee	3,000.	"	April " "
Ben. F. Colcord	1,000.	"	Oct. 1, 1892
Emily Colcord	200.	"	" " "

Name of creditor.	Amount.	Rate of int.	To be computed from.
J. C. Closson	100.	6 %	Feb. 1, 1893
" " "	100.	"	Nov. 1, 1892
Nancy P. Colcord	500.	"	Apr. 1, 1893
Samuel C. Clark	1,000.	"	Apr. " 1893
Ann J. Clark	2,000.	"	Jan. 1, 1894
" " "	1,000.	"	Oct. 1, 1893
" " "	1,100.	"	Sept. " "
Clara L. Cummings	500.	"	Apr. " "
Daniel M. Cota	200.	"	July " "
Daniel M. Cota	500.	"	Aug. 1, 1893
Junius Collins	2,000.	"	Dec. 1, 1892
May H. Cowdrey	500.	"	M'ch 1, 1893
" " "	500.	"	Dec. " 1892
W. H. Cotton	200.	"	Jan. " 1893
Emma D. Colcord	1,000.	"	Dec. 1, 1892
" " "	500.	"	Feb. 1, 1893
Hattie Closson	100.	"	Feb. " "
Thomas Colwell	20,000.	"	M'ch " "
Maria Cole	500.	"	Apr. " "
Carrie M. Clark	100.	"	Jan. " "
Hannah H. Coggins	1,000.	"	Jan. " "
A. A. Chase	500.	"	Dec. " 1892
" " "	200.	"	Jan. " 1893
Adam Cavers	530.	"	May 1, 1894
" "	1,590.	"	Feb. 1, "
" "	3,270.	"	" " "
" "	2,725.	"	June " 1893
" "	530.	"	M'ch " "
" "	530.	"	Apr. " "
A. M. Chase	500.	"	Feb. 1, 1893
F. W. Carpenter	50.	"	Oct. 1, 1892
Annie Chambers	2,500.	"	Dec. 1, "
65 William I. Carter	2,500.	"	Nov. 1, 1892
" " "	2,000.	"	Oct. " "
Marion Case	1,100.	"	Oct. 1, 1893
Lucia Case	1,000.	"	Jan. " "
" "	1,000.	"	Apr. " "
George Derrick	1,000.	"	Nov. 1, 1892
Sarah J. Dillingham	100.	"	Feb. 1, 1893
" " "	100.	"	Apr. " "
" " "	50.	"	May 1, "
" " "	50.	"	June " "
Jennie E. Dillingham	50.	"	Feb. 1, "
" " "	200.	"	May 1, "
Harriet L. Dexter	500.	"	Dec. 1, 1892
Irene H. Dexter	500.	"	Dec. " "
W. L. Damon	500.	"	Feb. 1, 1893
James M. Davis	2,000.	"	M'ch 1, 1893
" " "	2,500.	"	May 1, "
Jane Dunne	1,000.	"	Feb. 1, "
F. A. Dodge	500.	"	Jan. 1, "
Catherine C. Dana	1,000.	"	Feb. 1, "
Emma T. Dailey	500.	"	M'ch 1, "
Luke T. Day	1,000.	"	Feb. 1, "
" " "	500.	"	Oct. 1, 1892
Anna M. Dewey	1,000.	"	Jan. 1, 1893
Mary G. Danforth	5,000.	"	Feb. 1, "
" " "	500.	"	April 1, "
" " "	2,500.	"	May 1, "
" " "	2,000.	"	Jan'y 1, "
Loomis Eames	500.	"	Feb. 1, "
Kate W. Emerson	400.	"	Dec. 1, 1892
" " "	100.	"	Feb. 1, 1893

Name of creditor.	Amount.	Rate of int.	To be computed from.
E. O. Eldridge	1,200.	6 %	Dec. 1, 1892
Mellisa S. Edwards	5,000.	"	" " "
East Greenwich Institute	5,000.	"	M'ch 1, 1893
Amasa D. Field	1,000.	"	Dec. 1, 1892
Hannah B. Ford	500.	"	Dec. " "
E. E. Farrar	300.	"	M'ch " 1893
" " "	100.	"	Apr. " "
" " "	100.	"	May 1, "
Seymour Farrar	200.	"	M'ch 1, "
" "	200.	"	Apr. " "
Fayette County National Bank	4,000.	"	Dec. " 1892
Sarah J. Foster	300.	"	May 1, 1893
Margaret Foster	1,000.	"	Feb. 1, 1893
" "	500.	"	June 1, "
First Congregational Society	600.	"	Jan. 1, 1893
Charles F. Gordon	200.	"	Feb. " "
" " "	1,000.	"	Oct. 1, 1892
" Julia M. Gilkey	500.	"	Apr. 1, 1893
" " "	100.	"	Nov. 1, 1892
O. H. Freeman	1,000.	"	Dec. 1, 1892
" "	3,000.	"	Feb. 1, 1893
Edwin L. Griffin	100.	"	Nov. 1, 1892
" " "	500.	"	Aug. 1, "
" " "	200.	"	Oct. 1, 1892
J. W. Grubb	1,000.	"	M'ch 1, 1893
John Gibson	300.	"	Jan. " "
Benjamin Gillet	1,000.	"	Feb. 1, 1893
A. Gorton	500.	"	Dec. 1, 1892
" "	12,800.	"	Jan. " 1893
" "	4,000.	"	Feb. " "
Greenwich National Bank	4,000.	"	M'ch " "
Harold Goodwin	1,100.	"	Feb. " "
Mary H. Goodrich	600.	"	Dec. 1, 1892
Mary J. K. Gilbert	500.	"	May 1, 1893
M. Gilmore	1,000.	"	Dec. 1, 1892
Mrs. L. O. Green	1,000.	"	M'ch 1, 1893
Caroline A. Gage	500.	"	Apr. 1, 1893
Lydia Gaylord	4,000.	"	Apr. 1, "
Willard Harris	450.	"	Dec. 1, 1892
John M. Hulett, adm'r	100.	"	Dec. 1, 1892
" " " "	100.	"	Feb. 1, 1893
" " " "	100.	"	May 1, 1893
H. Hollister	250.	"	Dec. 1, 1892
H. Hollister	50.	"	Feb. 1, 1893
E. Hurd	1,000.	"	M'ch 1, 1893
A. Hatch	500.	"	Feb. 1, 1893
Abbie J. Hitchcox	100.	"	Nov. 1, 1892
H. W. Hanson	300.	"	Dec. 1, 1892
Cornelia B. Hanson	2,000.	"	Feb. 1, 1893
Sarah A. Herbert	100.	"	Feb. 1, 1893
" " "	100.	"	May 1, "
Jane W. Horner	1,600.	"	M'ch 1, 1893
J. J. Hough	1,500.	"	Dec. 1, 1892
Laura R. Hart	500.	"	M'ch 1, 1893
W. C. Hennis	1,000.	"	M'ch 1, 1893
George A. Harris	500.	"	Feb. 1, 1893
Samuel A. Hill	1,000.	"	May 1, 1893
Frank P. Hulsizer	400.	"	Nov. 1, 1893
" " "	300.	"	Sept. 1, 1893
Emily Hermance	2,250.	"	M'ch 1, 1893
" "	1,100.	"	Jan. 1, 1893
Julia P. Harmon	50.	"	Feb. 1, 1893
Julia P. Harmon	100.	"	May 1, 1893
Julia P. Harmon	300.	"	Jan. 1, 1893

	Name of creditor.	Amount.	Rate of int.	To be computed from.
	Almira A. Hemenway	100.	6 %	Feb. 1, 1893
	Georgiana Hall	3,500.	"	Jan. 1, 1893
67	George T. Howard	500.	"	Feb. 1, 1893
	Julia B. James	1,000.	"	Jan. 1, 1893
	George A. Jenks	500.	"	M'ch 1, 1893
	P. B. Jones	500.	"	Oct. 1892
	Samuel M. Knowles	3,000.	"	M'ch 1, 1893
	H. G. Kimball	500.	"	Feb. 1, 1893
	L. C. Kendall	1,700.	"	Feb. 1, 1893
	Mary Kimball	500.	"	Apr. 1, 1893
	Sewall Lancaster	500.	"	Dec. 1, 1892
	Rebecca S. Lewis	200.	"	Jan. 1, 1893
	T. E. Lufkin	500.	"	Aug. 1, 1892
	A. F. Lewis	850.	"	Dec. 1, 1892
	" " "	50.	"	Feb. 1, 1893
	" " "	1,150.	"	Apr. 1, 1893
	W. M. Lansdale	400.	"	Jan. 1, 1893
	" " "	900.	"	Feb. 1, 1893
	" " "	300.	"	M'ch 1, 1893
	Martha E. Loomis	200.	"	May 1, 1893
	" " "	150.	"	Apr. 1, 1893
	A. H. Loomis	500.	"	Apr. 1, 1893
	Hannah Lee by Chas. Lee	50.	"	May 1, 1893
	Chas. Lee	150.	"	Feb. 1, 1893
	Prudence G. McGilony	500.	"	Feb. 1, 1893
	George McClure	1,000.	"	Feb. 1, 1893
	Cornelia McChesney	4,500.	"	Jan. 1, 1893
	" "	1,000.	"	Feb. 1, 1893
	" "	1,000.	"	M'ch 1. 1893
	" "	1,000.	"	Apr. 1, 1893
	Amy D. McLean	500.	"	Jan. 1, 1893
	Mary McCaslin	1,000.	"	Nov. 1, 1893
	Mary McGowan	500.	"	Feb. 1, 1893
	Bella C. McCall	50.	"	Dec. 1, 1892
	William McFarland	500.	"	Jan. 1, 1893
	James A. McCauley	2,000.	"	Dec. 1, 1892
	Emily A. McCabe	1,000.	"	Feb. 1, 1893
	Alice D. Munford	300.	"	Dec. 1, 1892
	E. G. Murphy	400.	"	Feb. 1, 1893
	Mary E. Miller	500.	"	May 1, 1893
	" " "	100.	"	July 1, 1893
	F. B. Merrill	2,000.	"	M'ch 1, 1893
	Rebecca Mills	1,500.	"	Dec. 1, 1893
	Henrietta W. Martin	300.	"	Apr. 1, 1893
	Matilda P. Nichols	1,500.	"	Feb. 1, 1893
	Mrs. J. W. Nickerson	500.	"	May 1, 1893
	O. H. Nickerson	500.	"	Aug. 1, 1892
	Cordelia Nickerson	500.	"	Aug. 1, 1892
	Kate N. Nickerson	500.	"	Aug. 1, 1892
68	A. A. Niles	500.	"	Aug. 1, 1892
	" " "	500.	"	Sept. 1, 1892
	A. A. Niles	500.	"	Dec. 1, 1892
	James N. Pendleton	500.	"	Nov. 1, 1892
	Jas. A. Pendleton	1,000.	"	M'ch 1, 1893
	" " "	500.	"	Aug. 1, 1892
	Jas. G. Pendleton	500.	"	Dec. 1, 1892
	Isaac C. Park	1,000.	"	Dec. 1, 1892
	Hannah T. Pendleton	500.	"	Dec. 1, 1892
	" " "	500.	"	Feb. 1, 1893
	Frank I. Pendleton	500.	"	Dec. 1, 1892
	William H. Park	1,000.	"	Apr. 1, 1893
	L. M. Perkins	100.	"	June 1, "
	" " "	100.	"	Aug. 1, 1893
	" " "	100.	"	Nov. 1, 1893

Name of creditor.	Amount.	Rate of int.	To be computed from.
Geo. Parson	3,000.	6 %	Dec. 1, 1892
C. W. Potter	100.	"	Apr. 1, 1893
A. C. Potter	300.	"	Dec. 1, 1892
" " "	700.	"	Jan. 1, 1893
Emily H. Potter	330.	"	Apr. 1, 1893
D. B. Potter	50.	"	Dec. 1, 1892
D. B. Potter, adm'r	740.	"	Dec. 1, 1892
P. Pendleton, Jr	1,000.	"	Aug. 1, 1892
John F. Peterson	1,000.	"	Feb. 1, 1893
Francis H. Powers	150.	"	Dec. 1, 1892
Helen W. Phillips	1,000.	"	Dec. 1, 1892
Walter P. Phillips	1,000.	"	Feb. " 1893
Mary Patton	1,000.	"	M'ch 1, 1892
Elizabeth F. Power	500.	"	Dec. 1, 1892
C. L. Pierce	100.	"	May 1, 1893
John H. Price	500.	"	Feb. 1, 1893
Ruth A. Kirk.	400.	"	Feb. 1, 1893
Wm. J. Robertson	1,400.	"	July 1, 1893
Mrs. O. E. Rendall	600.	"	Feb. 1, 1893
Charlotte H. A. Roher	300.	"	Aug. 1, 1892
" " " "	300.	"	Sept. 1, 1892
Silas A. Reeder	500.	"	Jan. 1, 1893
" " "	1,550.	"	M'ch 1, 1893
Frank H. Reeder.	100.	"	M'ch 1, 1893
Anna M. Reeder	500.	"	M'ch 1, 1893
A. J. Roney	150.	"	May 1, 1893
John Roney	1,900.	"	May 1, 1893
W. Richmond, trustee	1,000.	"	Dec. 1, 1892
" "	500.	"	Feb. 1, 1893
Sarah P. Staples	1,000.	"	Feb. 1, 1893
Lottie A. Sheldon	1,000.	"	Apr. 1, 1893
" " "	150.	"	Dec. 1, 1892
Charlotte A. Sheldon	800.	"	Dec. 1, 1892
" " "	7,700.	"	Jan. 1, 1893
" " "	2,000.	"	Apr. 1, 1893
Emma C. Straham	400.	"	M'ch 1, 1893
" "	1,000.	"	Apr. 1, 1893
Wm. Shaw.	500.	"	Dec. 1, 1892
Martha S. Shipman	500.	"	Jan. 1, 1893
Mary E. Stevens	1,000.	"	Feb. 1, 1893
Elizabeth C. Smead	500.	"	M'ch 1, 1893
E. B. Safford	500.	"	Dec. 1, 1892
H. K. Shaner	100.	"	Dec. 1, 1892
" " "	100.	"	Feb. 1, 1893
" " "	100.	"	Apr. 1, 1893
Mary M. Spencer	1,000.	"	May 1, 1893
C. A. Shaw	100.	"	Dec. 1, 1892
" " "	100.	"	Jan. 2, 1893
" " "	100.	"	Apr. 2, 1893
Lucy A. Sessions	100.	"	Feb. 2, 1893
A. P. Sessions	500.	"	Feb. 1, 1893
" " "	500.	"	Apr. 1, 1893
Fred C. Southgate	200.	"	Jan. 2, 1893
Francis E. L. Spencer	200.	"	Apr. 2, 1893
S. A. Tomlinson	500.	"	Jan. 2, 1893
G. R. Thompson	200.	"	June 2, 1893
" " "	100.	"	Aug. 2, 1893
Mary E. Thompson	100.	"	Dec. 2, 1892
" " "	100.	"	Feb. 2, 1893
W. H. Tilden	1,000.	"	Apr. 1, 1893
" " "	400.	"	M'ch 1, 1893
" " "	600.	"	Dec. 1, 1892
Elizabeth Thompson	650.	"	Feb. 1, 1893
S. W. Thornton	1,000.	"	Dec. 1, 1892

	Name of creditor.	Amount.	Rate of int.	To be computed from.
Mary A. Terry		100.	6 %	Apr. 1, 1893
" " "		200.	"	May 1, 1893
Harriet D. Waite		250.	"	July 1, 1893
Sarah A. Whitney		550.	"	Dec. 1, 1892
" " "		100.	"	Oct. 1, 1892
Anna F. Whitmore		800.	"	Feb. 1, 1893
A. G. Whitemore, executor		500.	"	Feb. 1, 1893
Gardner Wheeler		1,000.	"	Jan. 1, 1893
W. H. Woodbury		2,000.	"	May 1, 1893
Ellen H. Weeden		1,500.	"	Oct. 1, 1892
" " "		1,500.	"	July 1, 1893
A. H. Westin		500.	"	May 1, 1893
Charles C. Watkins		100.	"	Dec. 1, 1892
" " "		300.	"	Jan. 1, 1893
" " "		500.	"	Feb. 1, 1893
" " "		600.	"	M'ch 1, 1893
Myron Wood		150.	"	M'ch 1, 1893
Z. J. Wheeler		200.	"	Feb. 1, 1893
B. P. Wheeler		100.	"	Dec. 1, 1892
	Sophia E. Webster	500.	"	Feb. 1, 1893
70	Pauline Wetherby	1,000.	"	Apr. 1, 1893
	Kate B. Wetherby	100.	"	May 1, 1893
S. E. Willey		1,000.	"	July 1, 1893
A. J. York		2,000.	"	May 1, 1893
" " "		1,100.	"	Feb. 1, 1893
W. L. P. Boardman		500.	"	June 1, 1893
" " " "		2,500.	"	July 1, 1893
" " " "		1,000.	"	Aug. 1, 1893
Bellows Free Academy		3,300.	"	Feb. 1, 1893
Marietta E. Barnes		1,000.	"	June 1, 1893
" " "		200.	"	Sept. 1, 1893
E. A. Borchers		1,100.	"	Aug. 1, 1893
F. N. Braley		500.	"	Jan. 1, 1893
Mrs. A. P. Braley		1,000.	"	Feb. 1, 1893
L. E. Clark		1,000.	"	Dec. 1, 1892
M. P. Day		500.	"	Jan. 1, 1893
" " "		500.	"	Feb. 1, 1893
James W. Fitzpatrick		2,000.	"	Jan. 1, 1893
Elizabeth G. Good		500.	"	Feb. 1, 1893
" " "		500.	"	M'ch 1, 1893
S. H. Holbrook		300.	"	Dec. 1, 1892
" " "		500.	"	Feb. 1, 1893
" " "		1,300.	"	Apr. 1, 1893
S. H. Holbrook, executor		500.	"	Dec. 1, 1892
" " " "		500.	"	Jan. 1, 1893
" " " "		700.	"	May 1, 1893
George H. King		300.	"	July 1, 1892
Teressa King		500.	"	Oct. 1, 1893
John F. Keator		250.	"	Feb. 1, 1893
N. B. Lewis		500.	"	Apr. 1, 1893
Nettie C. Lewis		100.	"	Apr. 1, 1893
Benjamin Leavitt		1,545.	"	Aug. 1, 1893
Mrs. E. B. Lawrence		500.	"	Jan. 1, 1893
William N. Loomis		3,000.	"	Nov. 1, 1892
Arthur B. McGowan		500.	"	M'ch 1, 1893
Mirion E. Moore		2,000.	"	Jun- 1, 1893
W. M. Price		500.	"	Dec. 1, 1892
John G. Roberts, adm'r		2,500.	"	May 1, 1893
Ellwoin T. Sawyer		500.	"	Apr. 1, 1893
B. L. M. Smith		1,000.	"	Jan- 1, 1893
Ada L. Watson		1,500.	"	Feb. 1, 1893
" " "		3,000.	"	M'ch 1, 1893
" " "		200.	"	Apr. 1, 1893
" " "		1,000.	"	May 1, 1893

	Name of creditor.	Amount.	Rate of int.	To be computed from.
	A. C. Watson	200.	6 %	Feb. 1, 1893
	Sarah C. Wilkes	1,500.	"	Jan. 1, 1893
	Amos S. Washburn	100.	"	Feb. 1, 1893
	Maggie Wakeman	100.	"	Jan. 1, 1893
	Margaret Wakeman	500.	"	Jan. 1, 1893
71	A. T. Foster, executor	1,000.	"	Jan. 1, 1893
	" " " "	1,000.	"	Feb. 1, 1893
	" " " "	2,000.	"	M'ch 1, 1893
	John S. Adams	28.80	7 %	Dec. 27, 1889
	" " "	28.80	"	Jan. 5, 1891
	" " "	28.80	"	Jan. 4, 1892
	" " "	28.80	"	Feb. 8, 1893
	Eliza S. Adams	28.80	"	Dec. 27, 1889
	" " "	28.80	"	Jan. 5, 1891
	" " "	28.80	"	Jan. 4, 1892
	" " "	28.80	"	Feb. 8, 1893
	Eliza J. Barton	1,100.	6 %	M'ch 1, 1893
	Amy S. Barton	1,000.	"	Feb. 1, 1893
	Mary R. Chambers	1,000.	"	M'ch 1, 1893
	J. P. Crosdale	28.50	7 %	Jan. 7, 1890
	" " "	28.50	"	Jan. 16, 1891
	" " "	28.50	"	Aug. 23, 1892
	Mrs. A. E. Bosworth	10,000.	6 %	Apr. 1, 1893
	Mary E. Hickman	2,250.	"	M'ch 1, 1893
	" " "	200.	"	May 1, 1893
	John C. Blake	100.	"	May 1, 1893
	Gideon Bearce	100.	"	Feb. 1, 1893
	Jessie D. Dean	1,000.	"	May 1, 1893
	John Dinsmore	1,000.	"	May 1, 1893
	George Gibbs	200.	"	May 1, 1893
	Mary C. Hawkes	100.	"	May 1, 1893
	Joseph C. Holman	100.	"	May 1, 1893
	Helen P. McAtee	2,000.	"	May 1, 1893
	C. D. Miller	2,100.	"	May 1, 1893
	Fred A. Piper	300.	"	May 1, 1892
	J. H. Smith	700.	"	May 1, 1893
	S. A. True	500.	"	May 1, 1893
	Sue W. Thomas	250.	"	May 1, 1893
	J. D. Thompson	1,600.	"	May 1, 1893
	Fannie Thompson	400.	"	May 1, 1893
	Emily B. Wing	200.	"	Feb. 1, 1893
	George C. Wing, Jr	50.	"	Feb. 1, 1893
	W. H. Wood	400.	"	May 1, 1893
	L. W. Wing	500.	"	May 1, 1893
	A. Young	600.	"	May 1, 1893
	Harriet E. Wood	100.	"	May 1, 1893
	John C. Bovie	1,800.	"	
	Dyke Quackenbush	500.	"	May 14, 1893
	John B. Quackenbush, *et al.*	7,000.	"	May 14, 1893
	John B. Quackenbush	2,100.	"	May 14, 1893
	Abbie H. Chapman	400.	"	Feb. 1, 1893
	H. H. McIntyre, guardian	50.	"	Jan. 1, 1893
	Marion McIntyre	50.	"	Apr. 1, 1893
	Mary S. Blodgett	500.	"	Jan. 1, 1893
72	Delia I. Davis	500.	"	Dec. 1, 1892
	Sarah H. Freeman	1,250.	"	Dec. 1, 1892
	Florinda McI. Morgan	500.	"	M'ch 1, 1893
	" " "	500.	5 %	May 9, 1893
	Clara McI. Perkins	350.	6 %	Jan. 1, 1893
	" " "	250.	"	Apr. 1, 1893
	A. L. Pease	300.	"	Sept. 1, 1892
	" " "	300.	"	Dec. 1, 1892
	" " "	200.	"	Nov. 1, 1892
	Sarah C. Weston	200.	"	Dec. 1, 1892
	" " "	100.	"	Nov. 1, 1892

	Name of creditor.	Amount.	Rate of int.	To be computed from.
	Edwin White	500.	6 %	Feb. 1, 1893
	" "	500.	"	June 1, 1893
	W. W. Warren, adm'r	1,000.	"	Feb. 1, 1893
	Charles Grieve	1,000.	"	Nov. 1, 1892
	Cordelia A. Green	3,100.	"	Aug. 1, 1892
	Nellie S. Houck	750.	"	Dec. 1, 1892
	Mary E. Higley	2,000.	"	Apr. 1, 1893
	" "	1,200.	"	May 1, 1893
	Daniel B. Hoermer	500.	"	Dec. 1, 1892
	Wm. A. Hoffer	100.	"	Jan. 1, 1893
	Ann R. Hoffer	300.	"	Jan. 1, 1893
	A. C. Lyman	27.50	7 %	Jan. 4, 1893
	Walter E. Lyman	212.50	"	Dec. 2, 1892
	L. E. Sturgeon	3,000.	6 %	Jan. 1, 1893
	" "	200.	"	Dec. 1, 1892
	" "	400.	"	Jan. 1, 1890
	John Slocum Estate	1,200.	"	Dec. 1, 1892
	Rachel Slocum	1,009.	"	Dec. 1, 1892
	Morris O'Donnel	500.	"	May 1, 1892
	Sarah J. Wisnell	500.	"	May 1, 1893
	Mary C. Hawkes	100.	"	Nov. 1, 1892
	Elizabeth M. Buxton	300.	"	Feb. 1, 1893
	Elizabeth F. Reid	50.	"	Feb. 1, 1893
	Ormanzo Allen	1,000.	"	Feb. 1, 1893
	" "	750.	"	Dec. 1, 1892
	Charles E. Adams	700.	"	May 1, 1893
	" "	100.	"	Apr. 1, 1893
	" "	100.	"	Feb. 1, 1893
	" "	600.	"	Dec. 1, 1892
	Joseph L. Barker	200.	"	Dec. 1, 1892
	Mary L. Beeman	1,000.	"	Dec. 1, 1892
	" "	1,000.	"	Jan. 1, 1893
	" "	1,000.	"	Apr. 1, 1893
	Archie N. Clark	1,050.	"	M'ch 1, 1893
	John E. Carr	200.	"	Dec. 1, 1892
	Harriet Dickinson	500.	"	Feb. 1, 1892
	Lizzie Dickinson	200.	"	Feb. 1, 1892
	John A. Estabrook	500.	"	M'ch 1, 1893
73	C. A. Farnham	$50.	"	Dec. 1, 1892
	F. M. Houghton	500.	"	May 1, 1893
	Edward L. Hastings	500.	"	Feb. 1, 1893
	Fred S. Hill	100.	"	Apr. 1, 1893
	Rev. H. Headley	100.	"	June 1, 1893
	Hattie B. Hall	300.	"	Oct. 1, 1893
	Mary J. Hibbard	1,000.	"	M'ch 27, 1893
	Mutual Loan Savings & Building Association	1,000.	"	M'ch 27, 1893
	A. S. Pendleton	1,000.	"	Aug. 27, 1892
	A. B. Ramsdell	1,000.	"	Feb. 27, 1893
	" " "	500.	"	Apr. 27, 1893
	Harriet J. Redman	1,000.	"	M'ch 27, 1893
	J. C. Reed	1,000.	"	May 27, 1893
	E. J. Smith	250.	"	Dec. " 1892
	" " "	400.	"	Feb. " 1893
	Mary A. Stevenson	1,500.	"	Dec. 27, 1892
	" " "	1,000.	"	Apr. 27, 1893
	Jas. Thompson, Jr	500.	"	Apr. 1, 1893
	Sarah D. Tibbals	200.	"	Jan. 27, 1893
	" " "	300.	"	May 27, 1893
	William A. Tibbals	200.	"	Jan. 27, 1893
	" "	300.	"	May 27, 1893
	S. T. Wayman	200.	"	Apr. 1, 1893
	Sarah J. Wilcox	200.	"	Jan. 1, 1893

Name of creditor.	Amount.	Rate of int.	To be computed from.
E. T. Merrill.	1,000.	6 %	Feb. 1, 1893
" " "	2,000.	"	M'ch 1, 1893
" " "	100.	"	Apr. 1, 1893
" " "	100.	"	June 1, 1893
E. A. Prescott	500.	"	Sept. 1, 1892
" " "	2,000.	"	July 1, 1893
N. M. Prescott	500.	"	Sept. 1, 1892
Martha J. Christie	50.	"	M'ch 1, 1893
Helen M. Christie	100.	"	M'ch 1, 1893
John G. Morris	1,000.	"	Nov. 1, 1892
Henry C. Gurley	250.	"	June 1, 1893
Marietta Clark	500.	"	Dec. 1, 1892
John H. Whitehouse	500.	"	Feb. 1, 1893
D. B. Scofield, as receiver of Bank of Zumbrota	20,000.	"	Aug. 1, 1892
Mrs. G. S. Barnes	1,000.	"	Dec. 1, 1892
Batavian Bank	2,500.	7 %	May 16, 1893
" "	1,000.	"	June 5, 1893
" "	2,000.	"	Aug. 3, 1893
Urias Bloom	3,000.	"	Aug. 9, 1893
A. L. Bastress	500.	"	May 18, 1893
" " "	230.	"	June 14, 1893
" " "	500.	"	Oct. 5, 1893
Citizens' Bank of Peotone	750.	"	Oct. 28, 1893
74 " " "	1,320.	"	May 29, 1893
" " "	500.	"	June 16, 1893
Citizens' Bank of Peotone	1,000.	"	June 27, 1893
" " "	1,000.	"	July 6, 1893
" " "	500.	"	July 20, 1893
" " "	1,000.	"	July 24, 1893
Citizens' National Bank of Keene	2,500.	"	May 11, 1893
Commercial Bank of Eau Claire.	8,000.	"	Sept. 1, 1894
E. G. Dort	2,000.	"	July 14, 1893
Dean Academy	2,500.	"	Sept. 5, 1893
" "	2,500.	"	Sept. 7, 1893
First National Bank of White Pigeon	2,500.	"	Oct. 22, 1893
First National Bank of Winsted.	2,000.	"	May 21, 1893
First National Bank of Newport, R. I.	1,500.	"	June 6, 1893
First National Bank of Newport, R. I.	2,500.	"	July 10, 1893
First National Bank of Newport, R. I.	750.	"	July 12, 1893
First National Bank of Newport, R. I.	2,750.	"	July 19, 1893
First National Bank of Newport, R. I.	2,633.34	"	July 21, 1893
First National Bank of Newport, R. I.	2,500.	"	Aug. 23, 1893
First National Bank of Newport, R. I.	2,500.	"	Sept. 10, 1893
First National Bank of Montpelier	4,000.	"	July 12, 1893
" " " "	2,000.	"	July 14, 1893
" " " "	2,500.	"	July 27, 1893
" " " "	2,500.	"	July 28, 1893
" " " "	3,000.	"	Aug. 1, 1893
" " " "	778.25	"	July 20, 1893
Hingham National Bank	2,500.	"	July 8, 1893
" " "	2,620.	"	July 10, 1893
G. W. Hackett	2,500.	"	June 2, 1893
" " "	3,000.	"	Aug. 23, 1893
Island Savings Bank	2,225.	"	June 19, 1893
" " "	2,250.	"	July 17, 1893
" " "	1,500.	"	May 27, 1893
" " "	778.25	"	July 20, 1893
" " "	1,000.	"	Aug 14, 1893
" " "	2,275.	"	Aug. 10, 1893
" " "	2,500.	"	Aug. 23, 1893
Keeseville National Bank	2,863.70	"	July 28, 1893
Lawrence National Bank	769.40	"	July 13, 1893
" " "	2,678.50	"	July 14, 1893

	Name of creditor.	Amount.	Rate of int.	To be computed from.
	Lindermann National Bank	1,500.	7 %	May 26, 1893
	" " "	1,320.	"	May 29, 1893
	" " "	2,500.	"	May 28, 1893
	" " "	2,628.35	"	July 17, 1893
	" " "	2,500.	"	July 17, 1893
	" " "	1,250.	"	Sept. 27, 1893
	" " "	1,400.	"	Sept. 28, 1893
	" " "	2,500.	"	Sept. 5, 1893
75	Merrimack Co. Savings Bank	2,500.	"	July 10, 1893
	Merrimack Co. Savings Bank	2,000.	"	June 17, 1893
	" " " "	2,000.	"	July 14, 1893
	" " " "	2,750.	"	June 16, 1893
	" " " "	2,500.	"	June 12, 1893
	A. D. Morse	2,750.	"	Sept. 10, 1893
	" " "	1,500.	"	Sept. 13, 1893
	" " "	2,350.	"	Sept. 11, 1893
	Mechanics' National Bank	2,000.	"	July 14, 1893
	" " "	2,500.	"	July 15, 1893
	Merchants' Savings Bank	2,500.	"	June 1, 1893
	G. W. Nickerson	2,000.	"	June 9, 1893
	" " "	2,500.	"	July 11, 1893
	" " "	2,000.	"	Sept. 18, 1893
	National Bank of Methuen	3,000.	"	May 21, 1893
	" " "	1,000.	"	Oct. 17, 1893
	" " "	1,500.	"	Aug. 22, 1893
	National Exchange Bank	2,500,	"	June 1, 1893
	National Bank of Redemption	1,500.	"	May 15, 1893
	" " "	2,500.	"	May 16, 1893
	" " "	4,500.	"	May 17, 1893
	" " "	3,000.	"	May 21, 1893
	" " "	2,500.	"	July 13, "
	" " "	3,000.	"	July 14, "
	" " "	5,000.	"	July 15, "
	" " "	2,000.	"	July 16, "
	" " "	2,628.35	"	July 17, "
	" " "	6,375.	"	July 18, "
	" " "	4,000.	"	July 31, "
	" " "	2,500.	"	Aug. 4, "
	" " "	1,480.	"	Aug. 29, "
	" " "	1,765.	"	Sept. 12, "
	" " "	1,250.	"	Sept. 15, "
	" " "	1,500.	"	Sept. 20, "
	" " "	750.	"	Oct. 1, "
	" " "	5,000.	"	Oct. 5, "
	North National Bank	707.63	"	May 26, 1893
	" " "	2,375.	"	June 5, 1893
	" " "	2,000.	"	June 12, 1893
	" " "	2,500.	"	Aug. 1, 1893
	" " "	2,500.	"	Aug. 4, 1893
	" " "	1,900.	"	Aug. 12, 1893
	" " "	1,480.	"	Aug. 29, 1893
	" " "	1,765.	"	Sept. 12, 1893
	" " "	1,250.	"	Sept. 15, 1893
	" " "	1,500.	"	Sept. 20, 1893
	" " "	2,500.	"	Sept. 22, 1893
	" " "	3,000.	"	Sept. 25, 1893
76	North National Bank	1,250.	"	Sept. 27, 1893
	" " "	750.	"	Oct. 1, 1893
	" " "	1,000.	"	Oct. 4, 1893
	" " "	5,000.	"	Oct. 7, 1893
	" " "	1,000.	"	Oct. 22, 1893
	" " "	2,500.	"	Oct. 23, 1893
	" " "	1,457.63	"	Oct. 24, 1893

	Name of creditor.	Amount.	Rate of int.	To be computed from.
North Granville National Bank		5,000.	7 %	June 1, 1893
" " " "		5,428.50	"	July 13, 1893
" " " "		2,000.	"	July 14, 1893
" " " "		500.	"	July 15, 1893
" " " "		2,500.	"	July 17, 1893
" " " "		2,275.	"	Aug. 10, 1893
" " " "		2,500.	"	Aug. 15, 1893
Pulaski National Bank		750.	"	May 14, 1893
" " "		1,500.	"	May 15, 1893
" " "		1,000.	"	June 6, 1893
" " "		1,250.	"	July 7, 1893
" " "		1,250.	"	Sept. 6, 1893
First National Bank of Orwigsburg		1,000.	"	May 15, 1893
" " " "		2,500.	"	Oct. 5, 1893
Security Savings Bank		3,000.	"	June 16, 1893
" " "		2,500.	"	July 10, 1893
" " "		2,714.33	"	Aug. 25, 1893
Sunbury Loan & Trust Deposit Co.		2,500.	"	July 21, 1893
Sunbury Loan & Trust Deposit Co.		3,000.	"	Sept. 18, 1893
Sunbury Loan & Trust Deposit Co.		2,000.	"	Sept. 15, 1893
Scanlan & Wall		3,009.63	"	May 21, 1893
" "		2,500.	"	Sept. 21, 1893
" "		3,333.33	"	Sept. 20, 1893
" "		1,200.	"	July 23, 1893
" "		3,000.	"	June 14, 1893
" "		1,500.	"	Aug. 13, 1893
" "		500.	"	Aug. 13, 1893
" "		4,000.	"	Sept. 14, 1893
" "		2,000.	"	Sept. 21, 1893
Tuckerton Bank		500.	"	Sept. 4, 1893
Winchester National Bank		2,637.50	"	June 16, 1893
" " "		1,000.	"	May 14, 1893
John J. Anderson		10,000.	"	July 28, 1893
C. E. Andrews, *et als.* as partners of New Bethlehem Savings Bank		2,500.	"	May 24, 1893
C. E. Andrews, *et als.*, as partners of New Bethlehem Savings Bank		1,500.	"	Aug. 24, 1893
City Bank of Boone, Iowa		1,000.	"	July 24, 1893
" "		5,000.	"	July 28, 1893
" "		1,000.	"	July 29, 1893
" "		3,000.	"	Aug. 1, 1893
77 W. H. Davidson		2,500.	"	Sept. 6, 1893
Dye Brothers		500.	"	June 28, 1893
" "		1,500.	"	Sept. 20, 1893
Daneville National Bank		1,500.	"	July 25, 1893
First National Bank of Iron Mountain		750.	"	May 18, 1893
First National Bank of Iron Mountain		1,650.	"	July 20, 1893
First National Bank of Iron Mountain		2,000.	"	July 31, 1893
First National Bank of Shullsburg		2,000.	"	May 16, 1893
First National Bank of Shullsburg		1,500.	"	May 30, 1893
First National Bank of Shullsburg		500.	"	June 22, 1893
First National Bank of Nevada		2,000.	"	Aug. 2, 1893
" " " "		2,500.	"	Aug. 3, 1893
" " " "		4,612.	"	July 15, 1893
" " " "		179.46	"	June 1, 1893
Hancock County National Bank		1,500.	"	July 25, 1893
" " " "		1,500.	"	July 26, 1893
" " " "		2,500.	"	Aug. 3, 1893
" " " "		2,500.	"	Aug. 25, 1893
Wm. Love		2,000.	"	May 23, 1893
Wm. Love		2,500.	"	June 13, 1893
" "		1,000.	"	July 19, 1893
" "		500.	"	July 14, 1893
" "		2,500.	"	Aug. 24, 1893

Name of creditor.	Amount.	Rate of int.	To be computed from.
Wm, Love	1,480.	7 %	Aug. 29, 1893
" "	1,500.	"	Sept. 20, 1893
" "	1,765.	"	Sept. 12, 1893
F. G. Barnard & Son	1,000.	"	M'ch 27, 1893
" " " " "	1,500.	"	Apr. 1, 1893
" " " " "	1,500.	"	Jan. 9, 1893
" " " " "	2,500.	"	M'ch 14, 1893
" " " " "	3,000.	"	Jan. 2, 1893
" " " " "	500.	"	Nov. 18, 1892
" " " " "	1,250.	"	Dec. 14, 1892
First National Bank of Milton	3,000.	"	Aug. 9, 1893
" " " "	2,500.	"	Aug. 4, 1893
" " " "	2,500.	"	May 16, 1893
" " " "	1,500.	"	May 15, 1893
G. H. Haven	3,000.	"	Oct. 24, 1893
" " "	1,500.	"	July 25, 1893
" " "	2,000.	"	July 31, 1893
" " "	1,500.	"	Aug. 23, 1893
" " "	1,250.	"	Aug. 14, 1893
" " "	1,250.	"	June 13, 1893
" " "	1,000.	"	Aug. 6, 1893
" " "	1,500.	"	June 28, 1893
" " "	750.	"	May 18, 1893
Norway National Bank	2,500.	"	May 16, 1893
" " "	2,250.	"	June 17, 1893
78 N. Sauer	1,000.	"	July 12, 1893
N. & M. Sauer	1,500.	"	Oct. 21, 1893
Amoskeag Savings Bank	2,500.	"	Oct. 24, 1893
" " "	2,000.	"	Sept. 18, 1893
Beatkce, Fry & Company	2,500.	"	Aug. 6, 1893
Danville National Bank	1,250.	"	Oct. 5, 1893
" " "	1,000.	"	Oct. 17, 1893
" " "	666.66	"	Oct. 6, 1893
" " "	2,500.	"	Sept. 5, 1893
" " "	1,000.	"	Sept. 27, 1893
" " "	2,000.	"	Oct. 3, 1893
" " "	2,500.	"	July 10, 1893
First National Bank of Sault Ste. Marie	1,500.	"	May 22, 1893
First National Bank of Sault Ste. Marie	2,500.	"	May 16, 1893
First National Bank of Sault Ste. Marie	2,500.	"	Aug. 26, 1893
First National Bank of Sault Ste. Marie	2,678.50	"	July 13, 1893
First National Bank of Sault Ste. Marie	1,250.	"	July 7, 1893
First National Bank of Sault Ste. Marie	500.	"	June 22, 1893
First National Bank of Sault Ste. Marie	5,000.	"	Sept. 1, 1893
National Bank of Rhode Island	1,250.	"	Aug. 23, 1893
" " " "	1,000.	"	July 12, 1893
" " " "	2,000.	"	Aug. 7, 1893
" " " "	2,000.	"	July 14, 1893
People's Savings Bank	1,500.	"	May 17, 1893
" " "	3,000.	"	July 16, 1893
" " "	2,500.	"	July 17, 1893
" " "	5,000.	"	July 13, 1893
Second National Bank of Bangor	2,650.	"	June 3, 1893
" " " "	2,000.	"	June 5, 1893
" " " "	1,500.	"	June 15, 1893
Stone City Bank	1,000.	"	July 7, 1893
" " "	3,500.	"	Sept. 21, 1893
" " "	1,650.	"	Sept. 20, 1893
" " "	2,500.	"	Oct. 19, 1893
" " "	2,500.	"	July 25, 1893
" " "	3,000.	"	Aug. 21, 1893
A. C. Trombowm	2,000.	"	Oct. 20, 1893
" " "	2,500.	"	Oct. 15, 1893

	Name of creditor.	Amount.	Rate of int.	To be computed from.
	Citizens' National Bank of Muncy	2,500.	7 %	July 11, 1893
	" " " "	1,250.	"	Aug. 18, 1893
	" " " "	1,320.	"	May 29, 1893
	" " " "	2,500.	"	June 8, 1893
	" " " "	1,500.	"	July 26, 1893
	Thomas Lowry	25,000.	"	May 12, 1893
	Grace M. Broad	1,400.	"	Oct. 20, 1893
	First National Bank of Mendota	2,500.	"	July 27, 1893
	" " "	1,200.	"	July 26, 1893
	" " "	2,500.	"	Aug. 31, 1893
	" " "	2,000.	"	Oct. 3, 1893
79	First National Bank of Mendota	$2,000.	"	July 28, 1893
	Mary E. McIntyre	1,200.	"	Oct. 19, 1893
	E. C. Brewer	2,000.	"	June 23, 1893
	E. C. Brewer	1,500.	"	July 16, 1893
	E. C. Brewer	1,000.	"	May 22, 1893
	Bank of Sharon	1,000.	"	May 19, 1893
	" "	1,632.50	"	May 23, 1893
	" "	1,320.	"	May 29, 1893
	Brandon National Bank	2,500.	"	May 19, 1893
	" " "	2,500.	"	Aug. 7, 1893
	" " "	1,250.	"	Sept. 15, 1893
	B. J. Borlang	2,650.	"	June 3, 1893
	" " "	1,250.	"	June 14, 1893
	" " "	1,500.	"	July 26, 1893
	Fowler National Bank of Lafayette	3,000.	"	Aug. 1, 1893
	Fowler National Bank of Lafayette	2,000.	"	Aug. 3, 1893
	" " " "	2,000.	"	Sept. 13, 1893
	" " " "	4,000.	"	Sept. 15, 1893
	" " " "	1,500.	"	Sept. 20, 1893
	George S. Lacy	2,375.	"	June 5, 1893
	" " "	2,000.	"	July 14, 1893
	" " "	2,000.	"	July 11, 1893
	" " "	1,000.	"	July 12, 1893
	Bank of Lanesboro	2,000.	"	Aug. 4, 1893
	J. H. Barr	1,000.	"	Sept. 1, 1893
	First National Bank of Athens	2,500.	"	May 16, 1893
	First National Bank of Athens	500.	"	July 2, 1893
	First National Bank of Athens	2,500.	"	July 17, 1893
	First National Bank of Athens	2,633.33	"	July 20, 1893
	R. E. Starks	3,000.	"	July 14, 1893
	M. E. Scanlon	1,000.	"	Aug. 2, 1893
	Bellwood Bank	1,177.08	"	Sept. 24, 1893
	Delaware County State Bank	3,000	"	May 21, 1893
	" " " "	2,500.	"	May 16, 1893
	" " " "	1,250.	"	June 13, 1893
	" " " "	2,500.	"	Aug. 14, 1893
	Chapman Banking Company	3,500.	"	May 15, 1893
	" " "	5,000.	"	May 16, 1893
	" " "	3,000.	"	May 17, 1893
	" " "	1,250.	"	May 18, 1893
	" " "	2,500.	"	Sept. 5, 1893
	" " "	1,500.	"	Sept. 23, 1893
	" " "	500.	"	Sept. 4, 1893
	" " "	2,500.	"	Oct. 15, 1893
	" " "	2,500.	"	Aug. 15, 1893
	" " "	2,333.33	"	Sept. 20, 1893
	" " "	2,750.	"	Sept. 14, 1893
	" " "	1,000.	"	Sept. 13, 1893
80	Chapman Banking Company	1,000.	"	Sept. 15, 1893
	" " "	1,833.33	"	Aug. 13, 1893
	" " "	1,000.	"	May 19, 1893
	" " "	3,000.	"	June 8, 1893
	" " "	2,500.	"	June 14, 1893

Name of creditor.	Amount.	Rate of int.	To be computed from.
Chapman Banking Company	2,000.	7 %	June 6, 1893
" " "	2,375.	"	June 5, 1893
" " "	1,500.	"	June 15, 1893
" " "	2,000.	"	June 12, 1893
" " "	1,500.	"	July 26, 1893
" " "	725.	"	Sept. 11, 1893
" " "	1,250.	"	Aug. 13, 1893
" " "	5,850.	"	Oct. 24, 1893
" " "	2,000.	"	Aug. 24, 1893
" " "	2,500.	"	May 21, 1893
" " "	3,250.	"	Oct. 19, 1893
Ezra C. Brett	1,000.	"	Apr. 10, 1893
" " "	3,000.	"	Apr. 7, 1893
Bank of Baldwin	2,500.	"	June 16, 1893
Island Pond National Bank	2,500.	"	July 19, 1893
" " " "	1,250.	"	Aug. 18, 1893
" " " "	2,000.	"	July 24, 1893
" " " "	1,400.	"	Sept. 23, 1893
First National Bank of Mystic Bridge	2,500.	"	July 19, 1893
First National Bank of Black River Falls	2,500.	"	July 19, 1893
First National Bank of Black River Falls	6,666.66	"	Oct. 6, 1893
First National Bank of Black River Falls	2,500.	"	June 28, 1893
First National Bank of Black River Falls	1,750.	"	June 27, 1893
First National Bank of Black River Falls	2,000.	"	July 31, 1893
First National Bank of Black River Falls	2,625.	"	May 25, 1893
First National Bank of Black River Falls	2,500.	"	Oct. 15, 1893
First National Bank of Black River Falls	2,000.	"	Oct. 18, 1893
First National Bank of Black River Falls	500.	"	Oct. 5, 1893
Benton Brothers	2,500.	"	May 26, 1893
" "	2,750.	"	May 21, 1893
Lee National Bank	3,000.	"	June 2, 1893
" " "	3,000.	"	May 17, 1893
L. A. Clapp	1,765.	"	Sept. 12, 1893
81 " " "	2,633.33	"	July 20, 1893
L. A. Clapp	500.	"	July 20, 1893
First National Bank of Centreville	2,000.	"	June 9, 1893
1st Nat'l Bank of Centreville	2,000.	"	June 17, 1893
" " "	2,500.	"	July 17, 1893
" " "	2,655.50	"	July 26, 1893
" " "	1,000.	"	July 28, 1893
" " "	1,000.	"	July 29, 1893
" " "	5,300.	"	Oct. 24, 1893
" " "	3,000.	"	June 14, 1893
W. W. Jones	1,250.	"	Sept. 27, 1893
" "	1,500.	"	Aug. 22, 1893
Silas Jones	1,500.	"	May 30, 1893
E. D. Thomas	725.	"	Sept. 11, 1893
Jeremiah Sessions	1,500.	"	July 13, 1893
" "	2,000.	"	July 12, 1893
Citizens' National Bank of Lyons	2,000.	"	Aug. 7, 1893
Caledonia National Bank	1,000.	"	July 29, 1893
" " "	2,750.	"	July 13, 1893
" " "	2,000.	"	July 21, 1893
" " "	500.	"	July 20, 1893
" " "	2,000.	"	July 14, 1893
" " "	2,500.	"	July 15, 1893
Cherokee State Bank	3,000.	"	Aug. 1, 1893
" " "	3,000.	"	Aug. 9, 1893
Juniata Valley Bank	1,000.	"	July 24, 1893
" " "	1,000.	"	July 29, 1893
" " "	3,000.	"	July 25, 1893
H. H. McIntyre	770.	"	June 14, 1893
Marshalltown State Bank	1,400.	"	Oct. 20, 1893
" " "	2,500.	"	Aug. 31, 1893

	Name of creditor.	Amount.	Rate of int.	To be computed from.
	Merchants' National Bank of St. Johnsbury	2,500.	7 %	June 1, 1893
	Merchants' National Bank of St. Johnsbury	2,500.	"	June 2, 1893
	Merchants' National Bank of St. Johnsbury	3,287.50	"	June 15, 1893
	Merchants' National Bank of St. Johnsbury	5,000.	"	June 19, 1893
	Merchants' National Bank of St. Johnsbury	4,000.	"	June 17, 1893
	Citizens' National Bank of Fairbanks	2,000.	"	July 11, 1893
	Citizens' National Bank of Fairbanks	750.	"	May 14, 1893
	Citizens' National Bank of Fairbanks	778.25	"	July 20, 1893
	Citizens' National Bank of Fairbanks	1,000.	"	Aug. 13, 1893
	Jersey Shore Banking Company	2,750.	"	May 27, 1893
	" " " "	3,000.	"	July 28, 1893
	Citizens' National Bank of Newport	1,000.	"	July 11, 1893
	" " " "	1,000.	"	Aug. 7, 1893
	G. B. Ransom	1,500.	"	May 17, 1893
82	First National Bank of Newport	2,500.	"	May 11, 1893
	" " " "	1,200.	"	May 18, 1893
	" " " "	1,500.	"	June 6, 1893
	First National Bank of New York	1,250.	"	Sept. 27, 1893
	" " " "	1,250.	"	Oct. 12, 1893
	" " " "	3,000.	"	Aug. 28, 1893
	" " " "	2,500.	"	Sept. 11, 1893
	" " " "	750.	"	May 18, 1893
	People's National Bank	1,000.	"	July 21, 1893
	" " "	1,000.	"	July 28, 1893
	" " "	1,000.	"	July 13, 1893
	" " "	825.	"	July 12, 1893
	Martinsburg Bank	1,000.	"	May 18, 1893
	" "	4,000.	"	July 14, 1893
	" "	1,500.	"	July 28, 1893
	" "	2,500.	"	Sept. 5, 1893
	" "	1,000.	"	Oct. 19, 1893
	G. A. Davis	1,750.	"	Aug. 21, 1893
	Clara McI. Perkins	500.	"	Oct. 29, 1893
	A. L. Pease	1,500.	"	June 15, 1893
	" "	2,500.	"	May 16, 1893
	" "	2,000.	"	Dec. 12, 1892
	Allen L. Pease	2,225.	"	June 17, 1893
	" "	2,633.34	"	July 21, 1893
	H. L. Rockwood	750.	"	May 14, 1893
	E. Crosswell	1,000.	"	Oct. 22, 1893
	J. B. Nichols	1,000.	"	Oct. 19, 1893
	" "	2,500.	"	Oct. 15, 1893
	Commercial Bank of Marshalltown	1,000.	"	Aug. 21, 1893
	" " "	1,000.	"	Aug. 23, 1893
	" " "	2,292.43	"	June 14, 1893
	Durrall, Fitz & Ainsley	1,500.	"	July 13, 1893
	" " "	2,500.	"	July 18, 1893
	" " "	1,200.	"	Sept. 2, 1893
	First National Bank of Yarmouth	2,500.	"	May 16, 1893
	" " " "	1,250.	"	June 14, 1893
	" " " "	2,750.	"	June 9, 1893
	" " " "	2,225.	"	June 17, 1893
	" " " "	3,000.	"	June 21, 1893
	" " " "	3,000.	"	June 6, 1893
	First National Bank of Ludington	3,000.	"	May 31, 1893
	First National Bank of Ludington	2,500.	"	June 5, 1893
	First National Bank of Ludington	1,000.	"	Aug. 6, 1893
	First National Bank of Mauch Chunk	2,500.	"	May 22, 1893
	First National Bank of Mauch Chunk	6,000.	"	June 15, 1893

	Name of creditor.	Amount.	Rate of int.	To be computed from.
	First National Bank of Marengo	778.25	7 %	July 20, 1893
	" " " "	1,250.	"	May 26, 1893
	First National Bank of Mechanicsburg	2,333.33	"	Sept. 20, 1893
	" " "	2,500.	"	Sept. 23, 1893
	" " "	2,500.	"	Sept. 20, 1893
83	First National Bank of Mechanicsburg.	500.	"	Sept. 4, 1893
	" " " "	1,500.	"	Aug. 24, 1893
	" " " "	3,000.	"	Sept. 21, 1893
	" " " "	2,500.	"	Sept. 25, 1893
	" " " "	2,500.	"	Aug. 25, 1893
	" " " "	2,714.34	"	Aug. 23, 1893
	" " " "	1,000.	"	Aug. 28, 1893
	" " " "	500.	"	Aug. 23, 1893
	" " " "	1,000.	"	Aug. 23, 1893
	" " " "	2,500.	"	Aug. 28, 1893
	" " " "	2,750.	"	Aug. 27, 1893
	" " " "	2,150.	"	Aug. 21, 1893
	" " " "	2,500.	"	July 24, 1893
	" " " "	3,000.	"	July 25, 1893
	" " " "	1,000.	"	July 24, 1893
	" " " "	1,250.	"	May 26, 1893
	" " " "	2,500.	"	July 25, 1893
	" " " "	2,678.50	"	July 16, 1893
	" " " "	3,000.	"	July 16, 1893
	" " " "	2,500.	"	July 17, 1893
	Miners' Savings Bank	1,000.	"	May 22, 1893
	" " "	2,000.	"	June 15, 1893
	" " "	2,000.	"	June 15, 1893
	Fort Stanwitz National Bank	1,250.	"	July 7, 1893
	" " " "	1,250.	"	Sept. 7, 1893
	La Salle National Bank	3,000.	"	Sept. 18, 1893
	" " "	1,250.	"	Sept. 7, 1893
	" " "	2,296.82	"	July 24, 1893
	" " "	2,500.	"	July 18, 1893
	" " "	1,625.	"	Aug. 1, 1893
	" " "	2,000.	"	Aug. 24, 1893
	First National Bank of What Cheer	1,275.	"	June 13, 1893
	" " " " "	1,500.	"	June 15, 1893
	" " " " "	1,500.	"	June 22, 1893
	" " " " "	1,500.	"	July 14, 1893
	" " " " "	2,500.	"	July 15, 1893
	" " " " "	3,825.	"	July 12, 1893
	First National Bank of Belleville	2,500.	"	Aug. 4, 1893
	First National Bank of Belleville	1,480.	"	Aug. 29, 1893
	First National Bank of Belleville	500.	"	Sept. 20, 1893
	First National Bank of St. Peter	2,500.	"	May 24, 1893
	" " " " "	2,000.	"	July 28, 1893
	" " " " "	3,000.	"	Aug. 1, 1893
	" " " " "	3,000.	"	Aug. 27, 1893
	First National Bank of Mystic Bridge	2,500.	"	July 13, 1893
	C. H. Higgs	2,500.	"	July 13, 1893
	" " "	500.	"	July 15, 1893
	Hook Bros.	1,000.	"	May 22, 1893
	" "	500.	"	June 9, 1893
84	Hook Bros.	5,500.	"	June 16, 1893
	" "	2,000.	"	June 17, 1893
	" "	2,750.	"	July 15, 1893
	" "	2,650.50	"	July 26, 1893
	" "	1,000.	"	Aug. 13, 1893
	" "	2,500.	"	Sept. 5, 1893
	" "	2,000.	"	Sept. 15, 1893
	" "	1,500.	"	Sept. 8, 1893
	" "	3,000.	"	Sept. 1, 1893
	" "	2,500.	"	Sept. 10, 1893

Name of creditor.	Amount.	Rate of int.	To be computed from.
Hook Bros.	2,000.	7 %	Sept. 14, 1893
" "	1,000.	"	Sept. 27, 1893
" "	1,400.	"	Sept. 28, 1893
" "	1,250.	"	Sept. 27, 1893
" "	2,500.	"	May 28, 1893
Pomeroy Bros. & Smith.	750.	"	May 18, 1893
" " "	1,500.	"	May 22, 1893
" " "	500.	"	June 6, 1893
" " "	2,500.	"	May 23, 1893
" " "	2,000.	"	July 21, 1893
" " "	2,500.	"	July 27, 1893
" " "	500.	"	May 16, 1893
Tidioutte Savings Bank	1,610.	"	June 20, 1893
" " "	1,400.	"	Sept. 28, 1893
" " "	1,000.	"	June 3, 1893
" " "	515.	"	Sept. 18, 1893
Jos. Underleak.	1,625.	"	Aug. 1, 1893
" "	2,296.82	"	Aug. 12, 1893
" "	1,000.	"	Aug. 23, 1893
" "	1,000.	"	Aug. 24, 1893
" "	1,500.	"	Sept. 6, 1893
" "	1,750.	"	Oct. 12, 1893
" "	2,500.	"	Sept. 15, 1893
" "	1,000.	"	Sept. 19, 1893
N. Woodworth.	1,000.	"	Aug. 23, 1893
" "	1,000.	"	Sept. 13, 1893
" "	1,000.	"	May 19, 1893
W. A. Greenfield	1,000.	"	July 28, 1893
" " "	1,000.	"	Sept. 13, 1893
" " "	1,000.	"	May 14, 1893
Ocean National Bank	1,000.	"	Oct. 19, 1893
" " "	2,000.	"	Sept. 13, 1893
State Bank of Plymouth	500.	"	Sept. 1, 1893
" " "	1,000.	"	Aug. 23, 1893
" " "	2,000.	"	June 23, 1893
" " "	500.	"	Aug. 11, 1893
" " "	1,000.	"	July 24, 1893
Safety Fund National Bank.	2,500.	"	Aug. 3, 1893
" " "	1,600.	"	Aug. 22, 1893
85 Safety Fund National Bank	$1,400.	"	Sept. 22, 1893
" " " "	1,675.	"	Oct. 20, 1893
" " " "	1,250.	"	Aug. 18, 1893
" " " "	2,306.	"	July 15, 1893
C. W. Hackett.	2,500.	"	June 2, 1893
" "	3,000.	"	Aug. 23, 1893
Chas. W. Nickerson	2,000.	"	June 9, 1893
" "	2,500.	"	July 11, 1893
" "	2,000.	"	Sept. 18, 1893
Sunbury Safe & Trust Deposit Co.	2,500.	"	July 21, 1893
" " " " "	2,000.	"	Sept. 15, 1893
" " " " "	3,000.	"	Sept. 18, 1893
John Holmgren	2,500.	"	Feb. 26, 1893
" "	1,200.	"	M'ch 23, 1893
" "	1,500.	"	M'ch 20, 1893
" "	1,765.	"	M'ch 20, 1893
" "	1,500.	"	M'ch 8, 1893
" "	1,000.	"	Jan. 31, 1893
" "	150.	"	Dec. 1, 1892
" "	2,499.99	8 %	M'ch 1, 1894
O. H. Hall.	1,000.	7 %	Oct. 4, 1893
" "	1,000.	"	Sept. 9, 1893
" "	1,000.	"	June 6, 1893
A. A. Plummer.	3,133.	"	July 5, 1893
" "	2,750.	"	Sept. 10, 1893

Name of creditor.	Amount.	Rate of int.	To be computed from.
A. A. Plummer	3,000.	7 %	Aug. 4, 1893
" "	2,500.	"	Aug. 6, 1893
" "	2,500.	"	May 15, 1893
" "	3,333.34	"	Aug. 1, 1893
" "	2,500.	"	Sept. 6, 1893
" "	3,000.	"	Sept. 8, 1893
" "	1,250.	"	Aug. 8, 1893
Loan & Trust Savings Bank	2,678.50	"	July 13, 1893
D. B. Scofield, receiver	750.	"	Oct. 5, 1893
" " "	2,000.	"	July 11, 1893
" " "	2,500.	"	Aug. 28, 1893
" " "	3,000.	"	July 14, 1893
" " "	1,500.	"	Sept. 4, 1893
" " "	2,000.	"	Oct. 18, 1893
" " "	2,000.	"	Oct. 24, 1893
" " "	2,500.	"	Oct. 25, 1893
" " "	500.	"	July 24, 1893
" " "	2,500.	"	Nov. 4, 1893
" " "	2,678.50	"	July 13, 1893
" " "	3,375.	"	June 12, 1893
" " "	1,750.	"	Oct. 12, 1893
" " "	1,750.	"	Sept. 7, 1893
" " "	3,333.33	"	Aug. 15, 1893
" " "	778.25	"	July 20, 1893
D. B. Scofield, receiver	825.	"	July 12, 1893
86 " " "	2,500.	"	June 5, 1893
" " "	2,500.	"	June 12, 1893
" " "	2,250.	"	June 5, 1893
" " "	500.	"	May 18, 1893
" " "	750.	"	Sept. 4, 1893
" " "	2,000.	"	Aug. 3, 1893
" " "	2,000.	"	May 25, 1893
" " "	2,000.	"	Oct. 3, 1893
" " "	2,500.	"	July 11, 1893
" " "	1,000.	"	Sept. 1, 1893
" " "	1,500.	"	Sept. 1, 1893
" " "	2,500.	"	Aug. 19, 1893
" " "	1,000.	"	Aug. 28, 1893
" " "	1,500.	"	July 26, 1893
G. W. Lovell	2,000.	"	July 10, 1893
" "	1,250.	"	July 7, 1893
" "	2,500.	"	July 28, 1893
First National Bank of Batavia	2,500.	"	July 13, 1893
" " " "	2,678.50	"	July 16, 1893
" " " "	3,000.	"	Aug. 9, 1893
Joseph Kelso	2,633.34	"	June 26, 1893
" "	2,500.	"	July 21, 1893
" "	2,500.	"	Aug. 14, 1893
" "	4,000.	"	May 30, 1893
First National Bank of Muscatine	2,500.	"	July 17, 1893
" " " "	3,000.	"	June 8, 1893
" " " "	2,500.	"	July 25, 1893
" " " "	1,000.	"	May 19, 1893
" " " "	2,000.	"	July 16, 1893
" " " "	3,000.	"	May 17, 1893
" " " "	2,800.	"	May 20, 1893
" " " "	2,500.	"	May 22, 1893
" " " "	3,000.	"	Sept. 1, 1893
" " " "	2,500.	"	Aug. 24, 1893
" " " "	3,000.	"	Sept. 17, 1893
" " " "	3,000.	"	Sept. 10, 1893
" " " "	3,135.	"	July 5, 1893
" " " "	2,750.	"	July 19, 1893
" " " "	2,000.	"	July 21, 1893

	Name of creditor.	Amount.	Rate of int.	To be computed from.
	First National Bank of Muscatine	3,800.34	7 %	Aug. 13, 1893
	" " " "	2,500.	"	Sept. 25, 1893
	" " " "	2,633.35	"	Aug. 7, 1893
	" " " "	2,000.	"	Sept. 16, 1893
	People's State Bank	2,500.	"	Feb. 14, 1893
	" " "	1,250.	"	M'ch 19, 1893
	" " "	1,500.	"	Apr. 6, 1893
	" " "	3,000.	"	Feb. 21, 1893
	" " "	2,500.	"	Jan. 25, 1893
87	People's State Bank	2,500.	"	Jan. 17, 1893
	Hazleton National Bank	2,000.	"	July 16, 1893
	" " "	2,500.	"	July 17, 1893
	" " "	2,750.	"	July 19, 1893
	" " "	2,500.	"	July 25, 1893
	" " "	2,500.	"	May 25, 1893
	" " "	3,333.33	"	Sept. 20, 1893
	" " "	2,000.	"	Sept. 28, 1893
	" " "	1,000.	"	Oct. 17, 1893
	Herkimer Bank	2,500.	"	May 22, 1893
	" "	2,375.	"	June 5, 1893
	H. N. Peterson	706.20	6½ %	July 1, 1893
	" "	1,867.13	6 %	Aug. 4, 1893
	Wm. Paul	1,000.	7 %	July 24, 1893
	Pine Island State Bank	2,500.	"	M'ch 1, 1893
	" "	3,000.	"	M'ch 9, 1893
	" "	1,000.	"	M'ch 13, 1893
	" "	1,250.	"	M'ch 20, 1893
	" "	1,480.	"	M'ch 18, 1893
	" "	1,500.	"	Apr. 1, 1893
	" "	1,000.	"	Nov. 14, 1893
	" "	2,500.	"	Feb. 25, 1893
	" "	1,000.	"	Dec. 7, 1893
	" "	2,500.	"	Dec. 28, 1893
	" "	2,500.	"	Jan. 24, 1893
	" "	2,000.	"	Feb. 2, 1893
	" "	3,000.	"	Feb. 1, 1893
	" "	3,000.	"	Feb. 25, 1893
	" "	750.	"	Apr. 5, 1893
	" "	1,000.	"	Apr. 10, 1893
	" "	3,000.	"	Apr. 24, 1893
	Sperry Bros. & Co	1,500.	"	July 26, 1893
	First National Bank of Orwigsburg	4,000.	"	June 21, 1893
	Shullsburg Bank	500.	"	July 20, 1893
	" "	500.	"	July 24, 1893
	" "	1,000.	"	Aug. 23, 1893
	R. C. Screekengart	500.	"	June 16, 1893
	Wyoming National Bank	2,000.	"	Aug. 6, 1893
	Yough " "	3,000.	"	Sept. 14, 1893
	Tradesman's National Bank	2,292.43	"	Feb. 14, 1893
	" " "	2,500.	"	Feb. 13, 1893
	" " "	4,000.	"	Jan. 17, 1893
	" " "	2,000.	"	M'ch 28, 1893
	" " "	2,000.	"	M'ch 28, 1893
	" " "	2,500.	"	M'ch 4, 1893
	" " "	3,000.	"	M'ch 9, 1893
	" " "	2,000.	"	Feb. 11, 1893
	" " "	2,000.	"	Feb. 11, 1893
	" " "	3,500.	"	Feb. 13, 1893
	" " "	1,480.	"	M'ch 18, 1893
88	Tradesman's National Bank	1,765.	"	M'ch 20, 1893
	" " "	2,500.	"	M'ch 22, 1893
	" " "	2,000.	"	M'ch 21, 1893
	" " "	1,000.	"	M'ch 28, 1893

Name of creditor.	Amount.	Rate of int.	To be computed from.
What Cheer Savings Bank	1,632.50	7 %	Jan. 23, 1893
" " "	1,250.	"	Feb. 13, 1893
" " "	750.	"	Jan. 12, 1893
" " "	1,375.	"	Jan. 18, 1893
" " "	500.	"	Jan. 24, 1893
" " "	2,000.	"	Jan. 28, 1893
" " "	2,500.	"	M'ch 4, 1893
" " "	1,480.	"	M'ch 18, 1893
" " "	1,000.	"	M'ch 28, 1893
" " "	2,000.	"	Apr. 18, 1893
" " "	2,500.	"	Dec. 1, 1893
" " "	1,500.	"	Nov. 15, 1893
" " "	500.	"	Dec. 9, 1893
" " "	1,000.	"	Dec. 27, 1893
Allen National Bank	1,250.	"	Sept. 15, 1893
Alpha State Bank	2,000.	"	Sept. 6, 1893
" "	350.	"	Dec. 9, 1893
" "	1,000.	"	Sept. 27, 1893
" "	2,000.	"	June 17, 1893
" "	2,500.	"	July 12, 1893
" "	2,000.	"	Aug. 24, 1893
" "	1,500.	"	Sept. 8, 1893
" "	1,500.	"	May 22, 1893
" "	2,500.	"	Sept. 22, 1893
Ashaway National Bank	9,083.33	"	
Citizens' National Bank of Sturgis	2,750.	"	May 21, 1893
Citizens' National Bank of Sturgis	3,500.	"	May 15, 1893
" " "	1,275.	"	June 13, 1893
" " "	2,500.	"	June 19, 1893
" " "	500.	"	June 27, 1893
" " "	550.	"	June 24, 1893
" " "	2,500.	"	Aug. 31, 1893
" " "	2,500.	"	Sept. 5, 1893
" " "	2,000.	"	Sept. 10, 1893
" " "	3,000.	"	Sept. —, 1893
A. B. Copeley	1,500.	"	Sept. 1, 1893
Jas. M. Davis	2,500.	"	Aug. 28, 1893
Elkador State Bank	3,000.	"	May 13, 1893
" "	1,000.	"	May 14, 1893
" "	1,500.	"	May 15, 1893
" "	2,500.	"	May 16, 1893
" "	2,225.	"	June 14, 1893
" "	1,000.	"	June 22, 1893
" "	500.	"	Aug. 13, 1893
" "	5,000.	"	Aug. 14, 1893
89 Elkador State Bank	2,500.	"	Sept. 6, 1893
" " "	3,000.	"	Sept. 8, 1893
" " "	1,000.	"	Sept. 13, 1893
" " "	2,500.	"	Sept. 15, 1893
" " "	1,000.	"	Sept. 17, 1893
" " "	1,250.	"	Sept. 20, 1893
" " "	2,500.	"	Oct. 5, 1893
" " "	2,500.	"	Oct. 15, 1893
First National Bank of Worcester	7,500.	"	June 26, 1893
First National Bank of Port Allegheny	1,250.	"	May 26, 1893
1st National Bank of Port Allegheny	2,500.	"	May 25, 1893
" " " " "	500.	"	June 16, 1893
" " " " "	2,500.	"	July 10, 1893
" " " " "	1,000.	"	July 24, 1893
" " " " "	500.	"	July 31, 1893
" " " " "	3,000.	"	Aug. 9, 1893
" " " " "	2,500.	"	Sept. 5, 1893
Farmers' Bank of Grass Lake	2,000.	"	June 17, 1893
First National Bank of Homer	2,000.	"	Jan. 16, 1893

Name of creditor.	Amount.	Rate of int.	To be computed from.
First National Bank of Poughkeepsie	2,000.	7 %	July 11, 1893
First National Bank of Poughkeepsie	778.25	"	July 20, 1893
First National Bank of "	2,000.	"	Aug. 7, 1893
First National Bank of "	450.	"	Aug. 15, 1893
First National Bank of Bristol	1,000.	"	July 24, 1893
" " " "	1,000.	"	July 28, 1893
First National Bank of Freeport	2,000.	"	Sept. 24, 1893
" " " "	1,750.	"	Oct. 25, 1893
" " " "	2,000.	"	Oct. 23, 1893
" " " "	1,500.	"	July 26, 1893
" " " "	1,400.	"	Sept. 22, 1893
" " " "	1,250.	"	Aug. 18, 1893
First National Bank of North Vernon	2,500.	"	Aug. 19, 1893
First National Bank of North Vernon	2,500.	"	Oct. 15, 1893
First National Bank of North Vernon	2,500.	"	Oct. 20, 1893
First National Bank of Decatur	5,000.	"	July 17, 1893
First National Bank of Lafayette	2,000.	"	July 31, 1893
" " " "	2,500.	"	Aug. 4, 1893
" " " "	3,000.	"	Aug. 9, 1893
Mrs. A. L. Finney	825.	"	Jan. 12, 1893
Greenwich National Bank	2,500.	"	May 26, 1893
" " "	1,500.	"	June 6, 1893
" " "	500.	"	June 9, 1893
" " "	3,333.33	"	Aug. 11, 1893
A. H. Huyck	2,325.	"	Oct. 22, 1893
Hopkinton Savings Bank	4,000.	"	July 16, 1893
" " "	4,000.	"	July 21, 1893
H. H. Hagensick	1,250.	"	June 13, 1893
Daniel Hoover	2,000.	"	Sept. 6, 1893
I. E. Hunt	500.	"	May 18, 1893
Lake Village Savings Bank	2,000.	"	Oct. 19, 1893
90 H. P. McClary	2,000.	"	Sept. 12, 1893
S. E. Miller	500.	"	Aug. 11, 1893
" "	778.25	"	July 20, 1893
Indiana County Deposit Bank	1,250.	"	Sept. 24, 1893
" " " "	2,500.	"	Oct. 15, 1893
National New Haven Bank	15,125.	6 %	Aug. 13, 1893
National Eagle Bank	1,250.	7 %	Aug. 23, 1893
" " "	725.	"	Sept. 11, 1893
National Bank of Lyndon	2,250.	"	June 5, 1893
National Bank of Lakeport	1,000.	"	May 26, 1893
Pacific National Bank	2,500.	"	Aug. 7, 1893
" " "	7,500.	"	Aug. 10, 1893
Pottsville State Bank	2,500.	"	July 17, 1893
" " "	750.	"	May 18, 1893
" " "	1,000.	"	June 27, 1893
" " "	3,000.	"	June 14, 1893
" " "	3,000.	"	July 13, 1893
" " "	3,000.	"	June 2, 1893
" " "	1,000.	"	May 14, 1893
" " "	2,500.	"	May 16, 1893
" " "	3,000.	"	Nov. 21, 1893
" " "	2,000.	"	July 14, 1893
John Riley	500.	"	June 28, 1893
Nellie B. Sherman	300.	"	July 24, 1893
S. A. Smith	1,632.50	"	May 23, 1893
B. R. Seymour	750.	"	Oct. 1, 1893
C. W. Thatcher	500.	"	Aug. 23, 1893
Wellsborough National Bank	2,000.	"	Sept. 6, 1893
C. B. Wetherby	500.	"	Feb. 1, 1893
Whetherby & Page	1,000.	"	May 14, 1893
Blackstone Canal National Bank	3,000.	"	June 16, 1893
" " " "	2,000.	"	July 11, 1893

	Name of creditor.	Amount.	Rate of int.	To be computed from.
	First National Bank of Webster, Mass.	2,650.	7 %	June 3, 1893
	" " " "	2,000.	"	June 15, 1893
	Monona State Bank.....	2,500.	"	May 21, 1893
	Monona State Bank.....	3,000.	"	Oct. 10, 1893
	Monona State Bank.....	1,000.	"	Aug. 25, 1893
	Monona State Bank.....	1,000.	"	Oct. 19, 1893
	Monona State Bank	2,656.50	"	July 26, 1893
	Monona State Bank.....	2,500.	"	Oct. 15, 1893
	Monona State Bank	1,000.	"	Aug. 28, 1893
	National Niantic Bank.....	3,000.	"	Sept. 15, 1893
	" " "	2,000.	"	Sept. 21, 1893
	National Bank of Brookville.....	2,000.	"	July 16, 1893
	" " "	1,000.	"	Sept. 16, 1893
	" " "	2,500.	"	Sept. 20, 1893
	" " "	1,000.	"	Sept. 27, 1893
	First National Bank of Calumet.....	4,863.70	"	July 28, 1893
91	First National Bank of Calumet.....	2,500.	"	Aug. 31, 1893
	" " "	1,500.	"	Sept. 8, 1893
	" " "	1,500.	"	Sept. 20, 1893
	" " "	1,000.	"	Sept. 27, 1893
	" " "	2,000.	"	Oct. 3, 1893
	" " "	500.	"	Oct. 5, 1893
	" " "	1,090.	"	Oct. 17, 1893
	First National Bank of Lake Linden.....	1,625.	"	Aug. 1, 1893
	" " " " "	2,296.82	"	Aug. 12, 1893
	" " " " "	500.	"	Sept. 18, 1893
	" " " " "	2,000.	"	Sept. 21, 1893
	" " " " "	1,250.	"	Aug. 24, 1893
	" " " " "	1,500.	"	Aug. 2, 1893
	" " " " "	2,000.	"	Apr. 13, 1894
	Merchants' & Miners' Bank of Calumet.....	2,500.	"	June 19, 1893
	Merchants' & Miners' Bank of Calumet.....	2,500.	"	Aug. 3, 1893
	" " " "	1,250.	"	Aug. 24, 1893
	" " " "	2,000.	"	Sept. 6, 1893
	" " " "	1,250.	"	Sept. 24, 1893
	" " " "	1,500.	"	Oct. 30, 1893
	Superior Savings Bank of Hancock, Mich..	4,500.	"	Aug. 14, 1893
	" " " " ..	5,000.	"	June 3, 1893
	" " " " ..	5,000.	"	July 3, 1893
	" " " " ..	5,000.	"	Sept. 20, 1893
	" " " " ..	1,000.	"	Aug. 2, 1893
	" " " " ..	2,000.	"	Nov. 4, 1893
	" " " " ..	2,000.	"	Apr. 30, 1894
	" " " " ..	2,500.	"	June 8, 1893
	" " " " ..	1,000.	"	Oct. 4, 1893
	" " " " ..	10,000.	"	June 1, 1893
	" " " " ..	10,000.	"	June 10, 1893
	" " " " ..	5,000.	"	June 15, 1893
	" " " " ..	5,625.	"	Aug. 25, 1893
	People's National Bank of Salem..... ...	4,000.	"	June 17, 1893
	" " " "	1,333.34	"	Sept. 20, 1893
	" " " "	1,500.	"	Aug. 22, 1893
	" " " "	4,000.	"	Sept. 28, 1893
	" " " "	1,750.	"	Oct. 17, 1893
	" " " "	2,000.	"	Oct. 18, 1893
	National White River Bank.....	3,000.	6 %	Aug. 4, 1893
	" " " "	4,000.	"	Sept. 15, 1893
	" " " "	3,000.	"	May 21, 1893
	Vilas National Bank..... ..	1,500.	7 %	May 26, 1893
	" "	2,000.	"	June 5, 1893
	" "	1,500.	"	June 6, 1893
	" "	1,250.	"	June 13, 1893
	" "	778.25	"	July 20, 1893
	" "	500.	"	July 24, 1893
92	" "	2,500.	"	Aug. 2, 1893

Name of creditor.	Amount.	Rate of int.	To be computed from.
Elkhart National Bank	5,000.	7 %	May 18, 1893
First National Bank of Kewanee	3,000.	"	June 6, 1893
" " " "	2,000.	"	June 9, 1893
" " " "	3,375.	"	June 12, 1893
" " " "	4,000.	"	July 17, 1893
" " " "	1,000.	"	July 19, 1893
" " " "	778.25	"	July 20, 1893
" " " "	2,633.34	"	Aug. 15, 1893
" " " "	6,500.	"	Aug. 13, 1893
" " " "	2,500.	"	Aug. 14, 1893
" " " "	1,000.	"	May 14, 1893
" " " "	2,750.	"	May 21, 1893
" " " "	3,000.	"	June 2, 1893
" " " "	2,500.	"	July 13, 1893
" " " "	3,000.	"	Aug. 21, 1893
" " " "	2,000.	"	Aug. 22, 1893
" " " "	3,000.	"	Sept. 11, 1893
" " " "	1,500.	"	Sept. 13, 1893
National Bank of Vergennes	5,500.	"	Oct. 1, 1893
S. W. Pomeroy	3,000.	"	May 17, 1893
" "	2,500.	"	May 16, 1893
" "	2,500.	"	May 19, 1893
" "	4,225.	"	June 17, 1893
" "	2,750.	"	June 19, 1893
" "	1,375.	"	July 18, 1893
" "	4,000.	"	July 31, 1893
" "	2,123.50	"	July 20, 1893
" "	2,500.	"	July 21, 1893
First National Bank of Lockhaven	2,633.35	"	Jan. 20, 1893
" " " "	2,000.	"	Aug. 4, 1893
" " " "	4,000.	"	July 24, 1893
First National Bank of Sharon	2,000.	"	Sept. 6, 1893
" " " "	3,000.	"	Sept. 10, 1893
" " " "	1,500.	"	Sept. 23, 1893
" " " "	3,500.	"	Sept. 20, 1893
" " " "	2,500.	"	Sept. 21, 1893
People's State Bank of Mazo Manie	1,000.	"	June 5, 1893
Second National Bank of Mechanicsburg	2,500.	"	Aug. 24, 1893
First National Bank of Merrill	3,462.50	"	May 14, 1893
First National Bank of Pittston	915.29	"	May 21, 1893
" " " "	400.	"	June 2, 1893
" " " "	1,333.33	"	Sept. 29, 1893
" " " "	2,650.	"	June 3, 1893
" " " "	2,376.	"	June 5, 1893
" " " "	2,500.	"	Sept. 2, 1893
" " " "	2,500.	"	May 26, 1893
Citizens' National Bank of Winterset	2,500.	"	Aug. 2, 1893
Citizens' National Bank of Winterset	2,000.	"	Aug. 3, 1893
93 Farmers' State Bank of Concord	1,000.	"	Aug. 23, 1893
" " " "	325.	"	Aug. 14, 1893
" " " "	1,500.	"	Sept. 8, 1893
Dillsbury National Bank	2,500.	"	Aug. 31, 1893
" " "	2,500.	"	Sept. 5, 1893
First National Bank of Renovo	1,500.	"	July 26, 1893
" " " "	2,500.	"	Oct. 19, 1893
" " " "	2,000.	"	Oct. 17, 1893
Pomeroy & Mitchell	2,500.	"	Sept. 1, 1893
" "	5,333.33	"	Sept. 11, 1893
" "	1,250.	"	Sept. 6, 1893
" "	5,500.	"	Sept. 13, 1893
" "	2,840.	"	Sept. 15, 1893
" "	2,000.	"	Oct. 3, 1893

Name of creditor.	Amount.	Rate of int.	To be computed from.
First National Bank of Garner	500.	7 %	July 24, 1893
" " " "	1,500.	"	July 26, 1893
" " " "	1,200.	"	July 23, 1893
" " " "	3,000.	"	Aug. 9, 1893
" " " "	1,460.	"	Sept. 28, 1893
Northern Trust Company, as assignee of Minnesota Agricultural Co	3,000.	"	May 21, 1893
Marietta D. Barnes	1,000.	"	Oct. 9, 1893
L. E. Clark	5,000.	"	May 14, 1893
Joel Linsley, agent	3,000.	"	July 26, 1893
" " "	500.	"	Aug. 11, 1893
" " "	1,000.	"	Aug. 23, 1893
" " "	1,000.	"	Sept. 1, 1893
" " "	2,000.	"	Oct. 18, 1893
" " "	2,500.	"	Oct. 22, 1893
Thomas Lowry	25,000.	"	May 12, 1893
Sharon National Bank	2,500.	"	M'ch 22, 1893
" " "	2,500.	"	M'ch 18, 1893
Mrs. G. S. Barnes	235.	6 %	June 1, 1893
Mrs. F. E. Mellen	5,284.07	"	May 16, 1893
Mrs. F. E. Mellen	100.	"	Dec. 13, 1892
H. E. Mellen	550.	"	May 16, 1893
J. D. Skone	700.	5 %	Dec. 1, 1892
J. C. Reeve	500.	6 %	M'ch 1, 1893
J. C. Reeve	1,000.	"	Sept. 2, 1892
James McIlwain	204.	5 %	Apr. 15, 1893
Monroe Cox	30.00	5 %	Dec. 7, 1892
" "	263.27	"	Apr. 1, 1893
" "	80.	"	Apr. 29, 1893
L. Kimball Printing Company	1,070.84	7 %	Oct. 6, 1893
Lehigh Valley Trust & Safe Deposit Company	2,548.93	7 %	Aug. 25, 1893
Journal Printing Company	100.79	"	June 1, 1893
Frank P. Bennett	89.22	6 %	June 1, 1893
94 Merchants' National Bank of St. Johnsbury	2,079.04	7 %	May 19, 1893
Frank P. Hulsizer	953.	"	May 8, 1893
Tradesman's National Bank	12,803.19	"	May 12, 1893
G. Walker, trustee	33,226.70		

Endorsed: Filed Feb. 11, 1897. C. N. Dickey, clerk. By H. J. Altnow, deputy.

95 STATE OF MINNESOTA, }
County of Hennepin. }

District Court, Fourth Judicial District.

ARTHUR R. ROGERS, Plaintiff,
vs.
THE MINNEAPOLIS TRUST CO., as Receiver of the Northwestern Guaranty Loan Company, *et al.*, Defendants.

I, William E. Hale, having been appointed receiver in the above-entitled matter or action, do hereby accept said appointment and said receivership.

Dated this 10th day of February, 1897.

WILLIAM E. HALE.

Endorsed: Filed Feb. 11, 1897, C. N. Dickey, clerk. By H. J. Altnow, deputy.

Know all men by these presents, that William E. Hale, of Minneapolis Minnesota, as principal, and National Surety Company, a corporation duly organized, created and existing under and pursuant to the laws of the State of Missouri, as surety, are held and firmly bound unto the State of Minnesota, in the sum of twenty-five thousand dollars ($25,000) lawful money of the United States of America, to be paid the State of Minnesota, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors firmly by these presents.

Sealed with our seals and dated this tenth day of February, A. D. 1897.

The condition of this obligation is such, that,

Whereas, an action was heretofore commenced in the district court of Hennepin county, State of Minnesota, fourth judicial district, by Arthur R. Rogers, plaintiff, against The Minneapolis Trust Company, as receiver of the Northwestern Guaranty Loan Company, and other persons, as defendants, and the stockholders of said Northwestern Guaranty Loan Company, to enforce their liability as stockholders of said Northwestern Guaranty Loan Company for the benefit of the creditors of said Northwestern Guaranty Loan Company; and

Whereas, said cause was thereafter tried and determined by the court, without a jury, and on the 8th day of February, 1897, a final decision was made and rendered, in which it was ordered and directed, among other things, that a judgment be entered against all said stockholders residing in the State of Minnesota and over whom the court had jurisdiction, to the amount of the face value of the stock held and owned by them. And the court, in such findings and order, then appointed the said William E. Hale as receiver in such proceedings, to collect said judgments and the money due from said stockholders, for the purpose of having the same distributed for the benefit of all intervening claimants in said action, and the bond fixed by the court, which the said receiver is required to give, is twenty-five thousand dollars ($25,000).

Now, therefore, if the said William E. Hale shall faithfully and justly perform all the duties of his trust as such said receiver, and comply with all the orders and directions of said court in relation thereto, and in all respects perform the duties enjoined upon him by law, then the above obligation to be void, otherwise to remain in full force and effect.

96 In witness whereof, said William E. Hale has hereunto set his hand and seal, and said National Surety Company has

caused its name to be subscribed and its corporate seal to be affixed hereto the day and year first above written.

WILLIAM E. HALE. [SEAL.]
NATIONAL SURETY COMPANY,
By W. B. JOYCE,
Resident Vice-President.
L. L. CHILDS,
[CORPORATE SEAL.] *Resident Ass't Secretary.*

Signed, sealed and delivered in presence of—
JOS. H. FORD.
E. W. DAVIS.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

On this tenth day of February, A. D. 1897, before me, a notary public within and for said county, personally appeared William E. Hale, to me known to be the person described in and who executed the foregoing instrument as principal, and acknowledged that he executed the same as his own free act and deed.

ROME G. BROWN,
Notary Public, Hennepin County, Minnesota.

[NOTARIAL SEAL.]

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Be it remembered that on this 10th day of February, A. D. 1897, before me personally appeared William B. Joyce and L. L. Childs, to me personally known, who being by me severally sworn say: The said William B. Joyce says: That he is resident vice-president of the National Surety Company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its board of directors.

And the said L. L. Childs says: That he is the resident assistant secretary of said company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of the said corporation by authority of its board of directors.

And the said William B. Joyce and the said L. L. Childs each acknowledge *that* the said instrument to be the free act and deed of said corporation.

F. A. CUTLER,
Notary Public, Hennepin County, Minnesota.

[NOTARIAL SEAL.]

97 STATE OF MINNESOTA, }
Department of Insurance. }

ST. PAUL, MINN., *January* 5, 1897.

I, D. C. Lightbourn, deputy insurance commissioner of the State of Minnesota, do hereby certify that the National Surety Company of Missouri is a corporation organized under the laws of the State of Missouri, and is authorized under its charter to guarantee the fidelity of persons holding places of public or private trust; to guarantee the performance of contracts other than insurance policies, and to execute and guarantee bonds and undertakings required or permitted in actions and proceedings at law. That it appears to my satisfactiou, from sufficient evidence on file in my office of commissioner of insurance of said State of Minnesota, that said corporation, the National Surety Company of Missouri, has furnished the same security which is required by law and the regulations of my department of life insurance companies, under the provisions of sections 355 to 358 inclusive, of chapter 34, General Laws of the State of Minnesota of One Thousand Eight Hundred and Seventy-eight (1878).

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year first above written.

D. C. LIGHTBOURN,
[OFFICIAL SEAL.] *Deputy Insurance Commissioner.*

Endorsed: I hereby approve the within bond and the surety thereon. Dated Feb'y 11th, 1897. Charles B. Elliott, district judge. Filed: Feb. 11, 1897, C. N. Dickey, clerk. H. J. Altnow, deputy.

98 STATE OF MINNESOTA, }
County of Hennepin, } *ss:*

District Court, Fourth Judicial District.

ARTHUR R. ROGERS, Plaintiff,
against

MINNEAPOLIS TRUST COMPANY, as Receiver of the Northwestern Guaranty Loan Company; Louis F. Menage, Edwin A. Norton; Louis F. Menage and William S. Streeter, Trustees; W. S. Streeter; J. M. Addeman, Trustee; Walter C. Rodman, Montana Trust Company, H. C. Hardon, Geo. Kiernan, H. W. Allen, Cyrus J. Anderson, Loren C. Ayer, William F. Andrews, Elizabeth A. Allen, Geo. E. Ashley, F. E. Alfred, Ella J. Ackley, D. R. Allison, W. S. Allis, E. L. Ainsley, Edward P. Allison, Gertrude Allison, L. F. Aldrich, Willis R. Armstrong, Lewis W. Anthony, C. H. Austin, W. H. Blaisdell, Addie P. Baker, C. H. Bailey, George Brainerd, Geo. P. Blair, Nettie A. Bassett, E. Baldwin, H. T. Baldwin, Ellen Baldwin, B. M. Braley, A. P. Braley, Henry Ballard, F. W. Ballard, Geo. H. Bartlett, Adeline W. Batchelder, Lydia R. Bartlett, E. C. Blanchard, George H. Bartlett, Cornelia W. Ball, Elizabeth V. Bailey, E. W. Baxter, Estate of William Breck, K. A. Benedict, Ben. S. Benton, Laurette Bingham, William R. Bridges, Addie I.

Bibber, Reed B. Bontecou, W. A. Brooks, James W. Brock, Alson Brown, Fred A. Brown, Elizabeth J. Brown, Samuel N. Brown, A. A. Brooks, William Burnham, Fannie E. Buckminster, Gates B. Bullard, Albert F. Burdette, Geo. Burnham, Jr., Joseph A. Budlong, Geo. A. Buffum, Frank H. Clark; The Capital Fire Insurance Company of Concord, N. H.; Mary E. Carpenter, Harvey Carpenter, S. E. Caswell, Frank B. Carr, Maria P. Clark, William H. Clark, Isabel H. Charlton, James Clark, Helen M. Clark, F. R. Chase, James Caird, James H. Carpenter, H. Maria Capron, Albert E. Calder, Silas Carey, James E. Case, Ellis Clark, William P. Chamberlain, Mary E. Carpenter, E. A. Chittenden, W. A. Childs, Daniel Coffrin, Ellis M. Coe, Charles Cobb, John H. Converse, David Coe, A. A. Coe, Charles H. Cross, L. Bart Crose, Ira Colby, F. H. Colby, William H. Cook, William G. Crocker, Hezekiah Conant, N. Stanton Coffin, Elizabeth M. Colt, Geo. W. Cornell, James M. Crowell, Mrs. R. K. Leverett Cushman, Henry L. Cushman, J. Jay Dana, S. W. Dana, Elmer A. Darling, A. B. Darling, Wilbur P. Davis, William L. Damon, Edwin Davis, Carrie L. Dean, Alfred J. Dean, Jane V. Delano, John W. Dean, W S. Dewey, J. J. Dewey, D. C. Dennison, Elizabeth Dean, William E. Dean, Fred W. Dean, George F. Dean, J. E. Dickerman, J. E. Dwinnell, Lucy F. Dillaway, Clara E. Dickson, Wm. M. Dickson, John C. Dickson, H. L. Dickerman, Walter Dole, O. G. Dort, Oliver H. Durrell, Sophia G. Durrell; Geo. B. Davis and Phil T. Walker, Executors; J. L. Edwards, Nancy J. Elms, Jacob Edwards; W. T. Emerson, Guardian; Estate of Stephen Emigh,
Thomas Fairbrother, Mrs. William P. Fairbanks, Edward
93 T. Fairbanks, William P. Fairbanks, Francis A. Fales,
Mrs. O. F. Fassett, Amasa Fairbrother, Myron Fairbrother, Freewill Baptist Printing Establishment, The Freewill Baptist Education Society; Loren Fletcher and Charles M. Loring, as Partners as L. Fletcher & Co.; Anna T. Fernald; E. N. Fernald, Guardian; The Freewill Baptist Foreign Miss. Society, A. Clark Fellows; Eustace W. Fisher, Executor; The Fire Underwriters' Association, Mary F. Field, Edwin P. Fisher, Isadora C. W. Fisher, Launcelot Foster, De Forest Fox, Mrs. H. E. Folsom, W. H. Ford, H. R. Flower, Sophia Flower, Rufus S. Frost, Albert G. Flower, Geo. B. Ford, Cashier; James M. Foss, Mariette A. Ford, Lucyett Fowler, The Galveston Trust Company, Joseph M. Gazzam, J. Herbert Gardner, William C. Gage, The Granite Savings Bank and Trust Company, Nelson M. Gay, Henry D. Gregory, George B. Greenslet, Dascon Green, J. McGregor Gibb, H. H. Gilson, E. H. Goodhue, Timothy M. Griffing, David A. Gorton, Emiline F. Godfrey, Edward H. Gourley, E. Hiram Goodhue, Ellen M. Goodhue, J. E. Goodrich, Egbert Guernsey, Fitzedward Hall, Henry R. Halleway, Emma E. Haman; W. H. Harrison, Ag't; William Hacker, Henry Haines, Estate of Mrs. Caroline B. Hadley, Perley F. Hazen, R. W. Harrison, James R. Hall, Mabel Hall, Ammi R. Hahn, Fred S. Hall, Earl P. Hawes, John D. Hatch; Amy F. Hall, Administratrix; Mrs. E. L. Hatch, Samuel A. Hendrickson, Helena Trust Company, Ernst Hitz, William

Higgins, Julia C. Higgins, Edmund F. Higgins, Alfred K. Hills, Benjamin Hinman, James I. Hilliker, Salmer P. Hibbard, Hadley F. Higgins, Clara T. Hitchcock, H. A. Hitchcock, Geo. M. Howe, Alex. Holmes, Caroline Holmes, O. O. Howard, Grace R. Houghton, S. Frank Holley, C. P. Hogan, Henry C. Howe, J. W. Hobart, C. T. A. Humphrey, Thomas L. Hutchins, John H. Husted, Melancie E. Hutchins, Harry M. Hutchins, Sterns Hutchins, Ruhamah P. Inman, Charles L. Jackman, Stephen M. Jacquith, C. H. Jones, Geo. E. Johnson, Anna Warner Johnson, C. H. Joslyn, Peter Joslyn, Keene Guaranty Savings Bank, F. L. Keay, Mary G. Kenney, Charles W. King, Robert R. Kimball, James E. Kimball, James M. Kimball, William B. Kimball, Laura B. Kimball, Geo. Kiernan, Rudolph Koradi, Marie Landon, Henry S. Lawrence, Lucia D. Lane; Mary C. Lawrence and P. J. Farrell, Administrators; Martha H. Leverett, A. L. Leach, C. N. Leonard, J. Bertram Lippincott, Geo. L. Littlefield, H. T. Lillibridge, Thomas Lowry, Frank W. Lebdell, Manufacturers' and Merchants' Mutual Insurance Company, Effingham Maynard, C. H. Manchester, Smith D. Mackey, John Mason, Fannie H. Maynard, Emma L. Maynard, Drusilla H. Manson, F. S. Mackinzie, Eliz. S. Manchester, Mary E. Marks, B. H. Marshall, Frank A. Merrill, Amanda A. Menage, Bessie M. Menage, Edwin F. Morse, Helen Morse, H. M. Morse, Geo. A. Morse, Martha J. Morse, Bessie Owens Morse, Charles C. Munford, E. B. Munford, Thomas S. McLam, Estate of Mrs. E. McLeod, Mrs. A. H. McLeod, Maud E. McLeod, James McDowell, William McFarland, Owen F. McCabe, Margaret C. McLaren, Lucia E. McNeil, Charles J. McKenzie, Nettie L. Nay, B. M. R. Nelson, Nath. F. Nye, Philip H. Neher, Neher & Carpenter, Mrs. J. W. Nickerson, L. P. Norton, William H. Noyes, John M. Norris, C. H. Olmstead, Orleans Trust Company, E. C. Parker, William S. Palmer, A. D. Paige, Howard S. Paine, Sarah Potter Paine, Louisa J. Prescott, Julius E. Prescott, Harriet M. Perry, Sarah A. Perkins, Curtiss H. Pettit, Anna M. Penniman, Willie E. Prescott, John H. Peckett, Charles P. Peret, Pennsylvania Company for Insurance on Lives and Granting Annuities,
100 Trustee for Mary Anna Gazzam under Will of John G. Reading, Deceased; F. T. Perkins, Geo. H. Perkins, Mary K. Perot, Charles W. Pickering, Geo. A. Pillsbury; The Philadelphia Trust, Safe Deposit and Insurance Company, Trustee for Mary Anna Gazzam under Will of John G. Reading, Deceased; Edward G. Pittman, W. N. Potter, C. A. Prouty, James H. Porter, Charles H. Raney, Walter A. Read, Caleb S. Ridgeway, A. J. Richardson, Samuel Ricker, Mary A. Ripley, Geo. C. Ripley, Catharine F. K. Rix, Abram T. Rose, Homer E. Royce, Hiram S. Rogers, Robert M. Roive, Franklin B. Rogers, Nancy B. Rose, Abigail Rodman, William H. Rowe, Mrs. J. R. Roblin, Florence P. Robinson, Charles W. Ruiter; Chas. H. Sprague, Trustee; J. Bunford Samuel, Mary J. Sanborn, Joel F. Sanborn, Mrs. N. C. Sanborn, W. J. Stanton, Jr., Walter H. Shaefer, Charles M. Swain, Hettie T. Sprague, Henry S. Sprague, Samuel S. Sprague, John Stanton, Wesley Sargent, Minnie E. Stenson, Geo. W. B. Snell, Mary E.

Shed, Anna K. Sheldon, Wm. B. Stevens, Henry Smilee, Nellie S. Baker Smith, Walter P. Smith, Susan H. Smith, Mary L. Smith, Isaac B. Smith, Fred E. Smith, William J. Simmons, James F. Shipman, J. Elliot Smith, Charles J. Shoemaker, Carrie M. Story, A. C. Stocking, Jos. C. Snow, Melanie M. Stussy, Thomas Stuart, Elbra S. Taggart, A. P. Taft, E. D. Thayer, Charles S. Tanner, James M. Tyler, Elmira O. Titus, J. O. Tilton, Jeremiah D. Tilton, Jno. C. Tilton, Stephen H. Tilden, H. J. Town, Geo. R. Thompson, Martha Towle, George Towle, Walter V. Towle, Mrs. Geo. Towle, Payson Tucker, Richard Tull, L. A. Tuxbury, George Turner, Cyrus Underwood, Edwin Underwood, Geo. M. Vail, Charles T. Walker, Mary L. Watson, Samuel W. Wray, Mary E. Ward, Geo. Wagg, W. D. Washburn, Alfred E. Watson, Josiah A. Wait, R. C. Waite, Charles W. West, Edward G. West, Albert B. Weimer, Rebecca H Weld, Gardner Wetherby, Oren Westcott, H. T. Wetherby, Henry L. Wetherby, E. M. Weston, Charles F. Wignall, J. F. Wright, Sara C. Wilkes, Austin Wright, Charles H. Wilson, Squires J. Wilson, Calvin Wilcox, Alpheus Wilt, Mary Wilt, Helen G. Williamson, S. L. Wiswell, Florence Wilson, D. Q. Woodruff, Irving S. Woodruff, Horace N. Woodruff, Rawson L. Wood, B. W. Woodward, H. E. and D. Q. Woodruff, William J. Wyley, W. A. Wheeler, and Northwestern Guaranty Loan Company, William Toothe, Mrs. A. G Thompson, Defendants.

101 *Judgment and Decree.*

The above-entitled action, having been instituted in this court by the above-named plaintiff, in behalf of himself and all other creditors of defendant Northwestern Guaranty Loan Company against said defendant Northwestern Guaranty Loan Company, and all and several the stockholders therein (who were such on the 20th day of May, 1893,) for the purpose of enforcing the superadded stockholders' liability for corporate debts imposed by the constitution of this State; and due notice having been given, conformably to the laws of this State, to all creditors of said defendant Northwestern Guaranty Loan Company, who desired to participate in any recovery herein, to intervene in said cause and duly present their verified claims for allowance; and pursuant to such notice and order the various creditors, hereinafter specified, having filed their duly verified claims against said defendant Northwestern Guaranty Loan Company and having duly intervened in this cause; and process herein having been duly served on all and several the defendant stockholders residing within the State of Minnesota; and, subsequent to the expiration of the time limited by said order, said cause having been duly placed on the calendar of this court for the April, A. D. 1895, general term thereof, and thereafter having been duly brought on for trial before this court, and findings of fact and conclusions of law having been by the court duly made and entered herein.

Now therefore, pursuant to said findings and order for judgment

and on motion of W. E. Hale, Esq., attorney for plaintiff herein, it is hereby adjudged, and decreed as follows, to wit:

First. That the defendant Northwestern Guaranty Loan Company was, on the first day of May, 1884, duly incorporated under the general laws of the State of Minnesota, to wit: Title two (2) of chapter thirty-four (34) of the General Statutes of 1878, and the amendments thereto, and ever since said date has continued to be a corporation organized, created and existing under and by virtue of said laws.

Second. That on the 20th day of May, 1893, in proceedings duly instituted and pending in this court, said defendant Northwestern Guaranty Loan Company was duly adjudged to be insolvent and a receiver of all and several the properties and assets of said corporation duly appointed by this court, in conformity to the provisions of the general insolvency laws of this State, to wit: chapter 148 of the General Laws of 1881, and the acts amendatory thereof, and that since said date all and several the properties and assets of said corporation, applicable to the payment of its debts, have been, and still are, within the jurisdiction of this court for purposes of administration in said insolvency proceedings.

Third. That the total capital stock issued by defendant Northwestern Guaranty Loan Company consisted of twelve thousand five hundred shares of the par value of one hundred dollars per share, all whereof was outstanding at the date of the adjudication of insolvency aforesaid and at said date held and owned by the several defendants herein, in the several amounts as hereinafter more fully set forth.

Fourth. That the total aggregate value of the entire corporate assets, applicable to the payment of the corporate indebtedness of said defendant Northwestern Guaranty Loan Company, hereinafter adjudged and determined, is four hundred and forty thousand dollars, and no more.

102 Fifth. That the amount of the principal of the outstanding valid subsisting indebtedness of said defendant Northwestern Guaranty Loan Company was, at the date of the adjudication of insolvency aforesaid, and still is, the sum of two million five hundred and forty-three thousand six hundred and eighty-nine and $\frac{29}{100}$ dollars ($2,543,689.29), all whereof was, at said date, and still is, held by this plaintiff and the several intervening plaintiffs herein, in the several amounts, with interest added, as hereinafter specifically adjudged and decreed.

Sixth. That the maximum liability imposed by the constitution and laws of this State upon corporate stockholders be imposed and enforced as against each and every stockholder of said Northwestern Guaranty Loan Company, holding stock therein as of the date of the adjudication of insolvency as aforesaid. That accordingly, each of such stockholders is liable for and shall pay and contribute to and for the equal benefit of the ascertained creditors of said corporation, a sum equal to the par value of the stock held by him at the date of the said adjudication of insolvency.

That the several stockholders of said defendant Northwestern

Guaranty Loan Company, together with their several holdings and the amount for which each is severally liable to contribute are as set forth in Schedule "B" hereto attached and made part hereof, as though set out herein in full.

Seventh. That plaintiff, Arthur R. Rogers, recover of said defendant Northwestern Guaranty Loan Company herein, the sum of fifty-eight and $\frac{82}{100}$ ($58.82) dollars.

Eighth. That said several intervening plaintiffs severally recover from the defendant Northwestern Guaranty Loan Company the several sums set opposite their respective names, all as in Schedule "A" hereto attached set forth, and hereby made part hereof, as though set out herein in full.

Ninth. That the following-named parties, being all the stockholders of said Northwestern Guaranty Loan Company resident within the State of Minnesota, pay to and for the equal benefit of said ascertained creditors the several sums set opposite their respective names, as follows, to wit:

William D. Washburn	$1,000.00
Florence P. Robinson	1,000.00
George C. Ripley	1,000.00
George A. Pillsbury	4,000.00
Curtiss H. Pettit	1,000.00
Thomas Lowry	10,000.00
Cynthia A. Lillibridge, as executrix of the estate of H. F. Lillibridge, deceased	3,000.00
L. Fletcher & Co.	1,000.00
George F. Dean	200.00
Fred W. Dean	200.00
William E. Dean	200.00
Elizabeth Dean	200.00
Carrie L. Dean	2,500.00
Alfred J. Dean	6,200.00
N. Stanton Coffin	1,000.00
William G. Crocker	13,100.00
F. R. Chase	16,000.00
Benjamin S. Benton	2,000.00
William S. Streeter, trustee	4,600.00
William S. Streeter	2,000.00

103 And that the said plaintiff and intervening creditors heretofore ascertained have and recover from said several parties the respective sums hereinbefore and in this subdivision mentioned and set opposite the name of each as above.

Tenth. That for the purpose of enforcing and collecting said judgments and all thereof and any and all liability thereon or in anywise incident thereto, and any and all liability upon the part of non-resident stockholders of said Northwestern Guaranty Loan Company, against whom no personal judgment for the ascertained liability is herein rendered, and disbursing the amounts so collected as hereinafter provided, W. E. Hale, Esq., has been by the order of

this court appointed receiver and has given bond in the sum of twenty-five thousand dollars, and qualified as such receiver.

That by the terms of said order of appointment said receiver was and hereby is authorized, empowered and directed to take any and all appropriate or necessary steps or proceedings for the purpose of collecting the judgments herein rendered and was and hereby is authorized, empowered and directed to take any and all necessary or appropriate steps or proceedings against the non-resident stockholders of said defendant Northwestern Guaranty Loan Company against whom no personal judgment herein has been ordered, for the enforcement and realization upon their aforesaid stockholders' liability, and to that end said receiver be and hereby is authorized, empowered and directed to institute and prosecute all such actions or proceedings in foreign jurisdictions as may be necessary or appropriate to this end.

Eleventh. That execution upon all or any of said judgments shall upon the application of said receiver be issued in the name of the above-named plaintiff and that any and all funds thereon realized shall be paid to said receiver, to be held by him and disbursed by order of this court, as hereinbefore provided.

Twelfth. That out of any amounts realized by said receiver, there be allowed and paid by him to E. A. Montgomery, the referee heretofore appointed herein by this court, as and for his compensation and services as such referee, the sum of three hundred ($300) dollars.

Thirteenth. That out of any amounts realized by said receiver herein there be allowed and paid to the above-named plaintiff, as and for the costs and expenses by him herein incurred, the sum of three hundred thirty and $\frac{22}{100}$ ($330.22) dollars, and a reasonable fee to plaintiff's attorney herein, W. E. Hale, Esq., which is hereby fixed and allowed in the sum of twenty-five hundred dollars ($2,500), which allowance shall include and cover any services performed by said W. E. Hale, as receiver herein, in the collection of the judgments herein rendered against the stockholder defendants residing within this State.

Fourteenth. That any and all moneys collected by said receiver be held by him subject to the further order of this court in the premises.

Fifteenth. That this court retain jurisdiction of this cause until adjustment of all and several the rights and liabilities of the respective parties hereto.

Dated November 3d, A. D. 1897.

By the court:

C. N. DICKEY,
Clerk of District Court.

104 SCHEDULE "A."

Name of creditor.	Amount.
A. C. Abbott	$127.60
Nancy W. Ashby	638.
Simon Allen	645.50
Trustees of Abington Lodge, K. of P.	879.20
Geo. L. Ayers	643.
Mary L. Austin	192.15
Jennie Ayers	128.60
Elvira E. Allen	580.06
Harriet B. Ainsworth	254.20
J. B. Ackley	757.60
Abbie H. D. Baker	63.80
J. C. Blanchard	628.
Christopher Burch	1,519.20
Abel Brown	1,248.50
Livonia P. Burch	306.50
Fred F. Badger	129.60
Rhoda Barker	638.
A. W. Benton	2,522.
A. W. Benton, executor	2,542.
James D. Bennett	4,476.
Carrie L. Ball	1,286.
Sarah R. Beatty	12,810.
Sarah D. Brownell	384.30
Ida A. Blake	255.20
James Buxton	643.
Allison O. Blake	889.20
W. J. Braiseth	7,656.
Orrin R. Burdick	385.60
W. T. Baker	1,286.
Abram Barker	506.40
Ella J. Booth	640.50
S. C. Bates	640.50
Geo. S. Breed and Caroline M. Breed	1,271.
Jos. Bonneville	382.80
Janette W. Burton	188.65
Anna S. Brown	1,266.
J. D. Brown	2,861.
Ella Burch	63 55
C. C. Binney	3,945.60
Frank Bradley	192.90
Fred Burch	508.40
Abel Brown	1,278.50
S. E. Burr	1,901.50
Jennie B. Bemis	1,256.
Mary E. Carter	4,531.
James B. Cone	2,552.
James B. Cone, trustee	3,798.
Ben F. Colcord	1,296.
Emily Colcord	259.20
J. C. Closson	256.75
Nancy P. Colcord	633.
Samuel C. Clark	1,266.
Ann J. Clark	5,043.10
Clara L. Cummings	633.
Daniel M. Cota	873.20
Junius Collins	2,572.
May H. Cowdrey	1,278.50
W. H. Cotton	256.20
Emma D. Colcord	1,924.
Hattie Closson	127.60
Thomas Colwell	25,420.
Maria Cole	$633.
Carrie M. Clark	128.10
Hannah A. Coggins	1,281.
A. A. Chase	899.20
Adam Cavers	11,413.50
A. N. Chase	638.
F. W. Carpenter	64.80
Annie Chambers	3,215.
William I. Carter	5,819.50
Marion Case	1,359.60
Lucia Case	2,547.
George Derrick	1,291.
Sarah J. Dillingham	380.05
Jennie E. Dillingham	316.
Harriet L. Dexter	643.
Irene H. Dexter	643.
W. L. Damon	638.
James M. Davis	5,694.52
Jane Dunne	1,276.
F. A. Dodge	640.50
Catherine C. Dana	1,276.
Emma T. Dailey	635.50
Luke T. Day	1,924.
Anna M. Dewey	1,281.
Mary G. Danforth	12,727.50
Loomis Eames	638.
Kate W. Emerson	642.
E. O. Eldridge	1,543.20
Mellisa S. Edwards	6,430.
East Greenwich Institute	6,355.
Amasa D. Field	1,286.
105 Hannah B. Ford	643.
E. E. Farrar	634.02
Seymour Farrar	507.40
Fayette County National Bank	5,144.
Sarah J. Foster	378.30
Margaret Foster	1,904.
First Congregational Society	768.60
Charles F. Gordon	1,551.20
Julia M. Gilkey	762.10
O. H. Freeman	5,114.
Edwin L. Griffin	1,041.30
J. W. Grubb	1,271.
John Gibson	384.30
Benjamin Gillet	1,276.
A. Gorton	22,143.80
Greenwich National Bank	5,084.
Harold Goodwin	1,403.60
Mary H. Goodrich	771.60
Mary J. K. Gilbert	630.50
M. Gilmore	1,286.
Mrs. L. O. Green	1,271.
Caroline A. Gage	635.
Lydia Gaylord	5,064.
Willard Harris	578.70
John M. Hulett, adm'r.	382.30
H. Hollister	385.30
E. Hurd	1,271.
A. Hatch	638.
Abbie J. Hitchcox	129.10
H. W. Hanson	385.80

Name of creditor.	Amount.
Cornelia B. Hanson	$2,552
Sarah A. Herbert	253.70
Jane W. Horner	2,033.60
J. J. Hough	1,929.
Laura R. Hart	635.50
W. C. Hennis	1,271.
George A. Harris	638.
Samuel A. Hill	1,261.
Frank P. Hulsizer	864.70
Emily Hermance	4,268.85
Julia P. Harmon	574.20
Almira A. Hemenway	127.60
Georgiana Hall	4,483.50
George T. Howard	638.
Julia B. James	1,281.
George A. Jenks	635.50
P. B. Jones	648.
Samuel M. Knowles	3,813.
H. G. Kimball	638.
L. C. Kendall	2,169.20
Mary Kimball	633.
Sewall Lancaster	643.
Rebecca S. Lewis	256.20
T. E. Lufkin	653.
A. F. Lewis	2,612.80
W. M. Lansdale	2,042.10
Martha E. Loomis	442.10
A. E. Loomis	633.
Hannah Lee by Chas. Lee	63.05
Chas. Lee	189.15
Prudence G. McGilony	638.
Geo. McClure	1,276.
Cornelia McChesney	9,577.50
Amy D. McClean	640.50
Mary McCaslin	1,231.
Mary McGowan	638.
Bella C. McCall	64.30
Wm. McFarland	640.50
James A. McCauley	2,572.
Emily A. McCabe	1,276.
Alice D. Munford	385.80
E. G. Murphy	510.40
Mary E. Miller	755.60
F. E. Merrill	2,542.
Rebecca Mills	1,839.
Henrietta W. Martin	379.80
Matilda P. Nichols	1,914.
Mrs. J. W. Nickerson	630.50
O. H. Nickerson	653.
Cordelia Nickerson	653.
Kate N. Nickerson	653.
A. A. Niles	1,946.50
James N. Pendleton	645.50
Jas. A. Pendleton	1,924.
Jas. G. Pendleton	643.
Isaac C. Park	1,286.
Hannah T. Pendleton	1,281.
Frank I. Pendleton	643.
William H. Park	1,266.
L. M. Perkins	373.30
Geo. Parson	3,858.
C. W. Potter	126.60
A. C. Potter	1,282.50
Emily H. Potter	417.78
D. B. Potter	64.30
D. B. Potter, adm'r	$900.20
P. Pendleton, Jr	1,306.
106 John F. Peterson	1,276.
Francis H. Powers	192.90
Helen W. Phillips	1,286.
Walter P. Phillips	1,276.
Mary Patton	1,331.
Elizabeth F. Power	643.
C. L. Pierce	126.10
John H. Price	638.
Ruth A. Kirk	510.40
Wm. J. Robertson	1,751.40
Mrs. O. F. Rendall	765.60
Charlotte H. A. Roher	782.10
Silas A. Reeder	2,610.55
Frank H. Reeder	127.10
Anna M. Reeder	635.50
A. J. Roney	189.15
John Roney	2,395.90
W. Richmond, trustee	1,946.
Sarah P. Staples	1,276.
Lottie A. Sheldon	1,458.90
Charlotte A. Sheldon	13,424.50
Emma C. Straham	1,774.40
Wm. Shaw	643.
Martha S. Shipman	640.50
Mary E. Stevens	1,276.
Elizabeth C. Smead	635.50
E. B. Safford	643.
H. K. Shaner	382.80
Mary M. Spencer	1,261.
C. A. Shaw	383.30
Lucy A. Sessions	127.60
A. P. Sessions	1,271.
Fred C. Southgate	256.20
Francis E. L. Spencer	253.20
S. A. Tomlinson	640.50
G. R. Thompson	375.80
Mary E. Thompson	255.20
W. H. Tilden	2,546.
Elizabeth Thompson	829.40
S. W. Thornton	1,286.
Mary A. Terry	378.80
Harriet D. Waite	312.75
Sarah A. Whitney	836.90
Anna F. Whitmore	1,023.80
A. G. Whitemore, executor	638.
Gardner Wheeler	1,281.
W. H. Woodberry	2,522.
Ellen H. Weeden	3,820.50
A. H. Westin	630.50
Charles C. Watkins	1,913.50
Myron Wood	190.65
Z. J. Wheeler	255.20
B. P. Wheeler	128.60
Sophia E. Webster	638.
Pauline Wetherby	1,266.
Kate B. Wetherby	126.10
S. E. Willey	1,251.
A. J. York	3,925.60
W. L. P. Boardman	5,001.50
Bellows' Free Academy	4,310.80
Marietta E. Barnes	1,504.20
E. A. Borchers	1,370.60
F. N. Braley	640.50

Name of creditor.	Amount.
Mrs. A. P. Braley	$1,276.
L. E. Clark	1,286.
M. P. Day	1,278.50
Jas. W. Fitzpatrick	2,562.
Elizabeth G. Good	1,273.50
S. H. Holbrook	2,669.60
S. H. Holbrook, executor	2,166.20
Geo. H. King	393.30
Teressa King	618.
John F. Keator	319.
N. B. Lewis	633.
Nettie C. Lewis	126.60
Benjamin Leavitt	1,925.07
Mrs. E. B. Lawrence	640.50
Wm. N. Loomis	3,873.
Arthur B. McGowan	635.50
Mirion E. Moore	2,512.
W. M. Price	643.
John G. Roberts, adm'r	3,152.50
Ellwoin T. Sawyer	633.
B. L. M. Smith	1,281.
Ada L. Watson	7,241.20
A. C. Watson	255.20
Sarah C. Wilkes	1,921.50
Amos S. Washburn	127.60
Maggie Wakeman	128.10
Margaret Wakeman	640.50
A. T. Foster, executor	5,099.
John S. Adams	164.84
Eliza S. Adams	164.84
Eliza J. Barton	1,398.10
Amy S. Barton	1,276.
Mary R. Chambers	1,271.
J. P. Crosdale	124.07
Mrs. A. E. Bosworth	12,660.
Mary F. Hickman	3,111.95
John C. Blake	126.10
107 Gideon Bearce	127.60
Jessie D. Dean	1,261.
John Dinsmore	1,261.
George Gibbs	252.20
Mary C. Hawkes	126.10
Joseph C. Holman	126.10
Helen P. McAtee	2,522.
C. D. Miller	2,638.10
Fred A. Piper	378.30
J. H. Smith	882.70
S. A. True	630.50
Sue W. Thomas	315.25
J. D. Thompson	2,017.60
Fannie Thompson	504.40
Emily B. Wing	255 20
Geo. C. Wing, Jr.	63.80
W. H. Wood	504.40
L. W. Wing	630.50
A. Young	756.60
Harriett E. Wood	126.10
John C. Bovie	1,800.
Dyke Quackenbush	629.50
John B. Quackenbush, *et als.*	8,813.
John B. Quackenbush	2,643.90
Abbie H. Chapman	510.40
H. H. McIntyre, guardian	64.05
Marion McIntyre	63.30
Mary S. Blodgett	640.50

Name of creditor.	Amount.
Delia I. Davis	$643.
Sarah H. Freeman	1,607.50
Florinda McI. Morgan	1,243.84
Clara McI. Perkins	764.85
A. L. Pease	1,034.30
Sarah C. Weston	386.30
Edwin White	1,266.
W. W. Warren, adm'r	1,276.
Charles Grieve	1,291.
Cordelia A. Greene	4,048.60
Nellie S. Houck	964.50
Mary E. Higley	4,045.20
Daniel B. Hoermer	643.
Wm. A. Hoffer	128.10
Ann R. Hoffer	384.30
A. C. Lyman	34.18
Walter E. Lyman	283.40
L. E. Sturgeon	4,684.60
John Slocum, estate	1,543.20
Rachel Slocum	1,286.
Morris O'Donnel	660.50
Sarah J. Wisnell	630.50
Mary C. Hawkes	129.10
Elizabeth M. Buxton	382.80
Elizabeth F. Reid	63.80
Ormanzo Allen	2,240.50
Chas. E. Adams	1,908.50
Joseph I. Barker	257.20
Mary L. Beeman	3,833.
Archie N. Clark	1,334.55
John E. Carr	257.20
Harriet Dickinson	668.
Lizzie Dickinson	267.20
John A. Estabrook	635.50
C. A. Farnham	64.30
F. M. Houghton	630.50
Edward L. Hastings	638.
Fred S. Hill	126.60
Rev. H. Headly	125.60
Hattie B. Hall	370.80
Mary J. Hibbard	1,267.
Mutual Loan, Savings and Building Ass'n	1,267.
A. S. Pendleton	1,302.
A. B. Ramsdell	1,903.
Harriet J. Redman	1,267.
J. C. Reeve	1,257.
E. J. Smith	579.30
Mary A. Stevenson	3,185.
Jas. Thompson, Jr.	633.
Sarah D. Tibbals	632.50
William A. Tibbals	632.50
S. T. Wayman	253.20
Sarah J. Wilcox	256.20
E. T. Merrill	4,070.20
E. A. Prescott	3,152.50
N. M. Prescott	650.50
Martha J. Christie	63.55
Helen M. Christie	127.10
John G. Morris	1,291.
Henry C. Gurley	314.
Marietta Clark	643.
John H. Whitehouse	638.
D. B. Schofield, as receiver of Bank of Zumbrota	26,120.

Name of creditor.	Amount.
Mrs. G. S. Barnes	$1,286.
Batavian Bank	7,125.59
Urias Bloom	3,858.
A. L. Bastress	1,585 73
Citizens' Bank of Peotone	7,833.16
Citizens' National Bank of Keene	3,255.25
108 Commercial Bank of Eau Claire	9,688.80
E. G. Dart	2,581.
Dean Academy	6,400.
First National Bank of White Pigeon	3,178.13
First National Bank of Winsted	2,602.
First National Bank of Newport, R. I.	19,489.63
First National Bank of Montpelier	19,047.95
Hingham National Bank	6,612.99
G. W. Hackett	7,093.40
Island Savings Bank	16,145.48
Keeseville National Bank	3,688.45
Lawrence National Bank	4,398.51
Lindermann National Bank	20,116.86
Merrimack County Savings Bank	15,209.68
A. D. Morse	8,448.
Mechanicks' National Bank	5,807.25
Merchants' Savings Bank	3,246.75
C. W. Nickerson	8,380.60
National Bank of Methuen	7,101.25
National Exchange Bank	3,246.75
National Bank of Redemption	64,142.38
North National Bank	46,678.83
North Granville National Bank	26,091.59
Pulaski National Bank	7,442.83
First National Bank of Orwigsburg	4,490.25
Security Savings Bank	10,597.92
Sunbury Loan & Trust Deposit Co.	9,628.75
Scanlan & Wall	27,017.78
Tuckerman Bank	640.
Winchester National Bank	4,720.39
John J. Anderson	12,940.
C. E. Andrews *et als.*, as partners of New Bethlehem Savings Bank	5,175.25
City Bank of Boone, Iowa	12,877.80
W. H. Davidson	3,200.
Dye Brothers	2,564.45
Daneville National Bank	1,933.20
First National Bank of Iron Mountain	5,676.27
First National Bank of Shullsburg	5,199.50
First National Bank of Nevada	11,976.34
Hancock County National Bank	10,292.65
Wm. Love	17,061.28
F. G. Barnard & Son	14,867.30
First National Bank of Milton	$12,281.
G. H. Haven	17,676.23
Norway National Bank	6,169.18
N. Sauer	1,291.10
N. & M. Sauer	1,906.88
Amoskeag Savings Bank	5,734.73
Beatkee Fry & Company	3,217.
Danville National Bank	13,923.52
First National Bank of Sault Ste. Marie	20,487.98
National Bank of Rhode Island	8,049.72
People Savings Bank	15,503.25
Second National Bank of Bangor	7,983.94
Stone City Bank	18,122.44
A. C. Trombowm	5,725.
Citizens' National Bank of Muncy	11,728.20
Thomas Lowry	32,568.75
Grace M. Broad	1,808.80
First National Bank of Mendota	14,101.50
Mary E. McIntyre	1,550.40
E. C. Brewer	5,826.15
Bank of Sharon	5,140.88
Brandon National Bank	8,071.45
B. J. Borlang	3,995.87
Fowler National Bank of Lafayette	15,988.95
George S. Lacy	9,537.28
Bank of Lanesboro	2,574.
J. H. Barr	1,281.
First National Bank of Athens	10,522.92
R. F. Starks	3,871.50
M. E. Scanlon	1,287.
Bellwood Bank	1,503.25
Delaware County State Bank	11,994.13
109 Chapman Banking Company	80,686.14
Ezra C. Brett	5,236.
Bank of Baldwin	3,242.25
Island Pond National Bank	9,194.64
First National Bank of Mystic Bridge	3,226.25
First National Bank of Black River Falls	21,926.14
Benton Brothers	6,826.10
Lee National Bank	7,801.30
L. A. Clapp	6,299.02
First National Bank of Centreville	24,938.31
W. W. Jones	3,520.88
Silas Jones	1,950.
E. D. Thomas	928.
Jeremiah Sessions	4,516.75
Citizens' National Bank of Lyons	2,574.
Caledonia National Bank	13,878.43
Cherokee State Bank	7,719.
Juniata Valley Bank	6,442.10
H. H. McIntyre	998.46

Name of creditor.	Amount.
Marshalltown State Bank	$4,974.46
Merchants' National Bank of St. Johnsbury	22,421.79
Citizens' National Bank of Fairbanks	5,844.85
Jersey Shore Banking Company	7,438.30
Citizens' National Bank of Newport	2,577.50
G. B. Ransom	1,953.
First National Bank of Newport	6,765.04
First National Bank of New York	11,208 33
People's National Bank	4,932.67
Martinsburg Bank	12,870.20
G. A. Davis	2,246.13
Clara McI. Perkins	635.30
A. L. Pease	7,864.45
Allen L. Pease	6,277.21
H. L. Rockwood	975.75
E. Crosswell	1,273.
J. B. Nichols	4,455.50
Commercial Bank of Marshalltown	5,536 38
Durrall, Fitz & Ainsley	6,699.20
First National Bank of Yarmouth	19,110.25
First National Bank of Ludington	8,428.95
First National Bank of Manch Chunk	11,031.75
First National Bank of Marango	2,628.40
First National Bank of Mechanicsburg	61,437.16
Miners' Savings Bank	6,484.20
Fort Stamwitz National Bank	3,214.63
La Salle National Bank	16,278.52
First National Bank of What Cheer	15,642.87
First National Bank of Belleville	5,754.10
First National Bank of St. Peter	13,537.85
First National Bank of Mystic Bridge	3,226.25
C. H. Higgs	3,871.50
Hook Bros	45,308.19
Pomeroy Bros. & Smith	13,273.85
Tidioutte Savings Bank	5,830.56
Jos. Underleak	16,238.81
N. Woodworth	3,864.30
W. A. Greenfield	3,869.40
Ocean National Bank	3,829.50
State Bank of Plymouth	6,443.20
Safety Fund National Bank	13,799.98
C. W. Hackett	7,093.65
Chas. W. Nickerson	8,377.75
Sunbury Safe & Trust Deposit Co.	9,611.65
John Holmgren	15,778.54
O. H. Hall	3,853.40
A. A. Plummer	30,830.60
Loan & Trust Savings Bank	$3,406.60
D. B. Scofield, receiver	75,452.42
G. W. Lovell	7,416.03
First National Bank of Batavia	10,493.85
Joseph Kelso	15,041.18
First National Bank of Muscatine	63,959.16
People's State Bank	17,474.58
Hazelton National Bank	23,924.63
Herkimer Bank	6,338.36
110 H. N. Peterson	3,225.01
Wm. Paul	1,288.
Pine Island State Bank	43,155.80
Sperry Bros. & Co.	1,933.95
First National Bank of Orwigsburg	5,185.20
Shullsburg Bank	2,572.20
R. C. Screekengart	648.15
Wyoming National Bank	2,574.
Yough National Bank	3,834.75
Tradesmen's National Bank	45,496.62
What Cheer Savings Bank	26,027.58
Allen National Bank	1,598.50
Alpha State Bank	19,726.69
Ashaway National Bank	9,083.33
Citizens' National Bank of Sturges	27,198.30
A. B. Copely	1,920.
Jas. M. Davis	3,208.75
Elkader State Bank	42,430.30
First National Bank of Worcester	9,709.50
First National Bank of Port Allegheny	17,743.08
Farmers' Bank of Grass Lake	2,591.60
First National Bank of Homer	2,651.
First National Bank of Poughkeepsie	6,740.47
First National Bank of Bristol	2,570.90
First National Bank of Freeport	12,677.09
First National Bank of North Vernon	9,570.75
First National Bank of Decatur	6,452.50
First National Bank of Lafayette	9,649.50
Mrs. A. L. Finney	1,094.45
Greenwich National Bank	10,130.95
A. H. Huyck	2,957.40
Hopkinton Savings Bank	10,347.20
H. H. Hagensick	1,620.38
Daniel Hoover	2,562.40
I. E. Hunt	650.50
Lake Village Savings Bank	2,542.50
H. P. McClary	2,556.50
S. E. Miller	1,646.30
Indiana County Deposit Bank	4,778.11
National New Haven Bank	18,823.06
National Eagle Bank	2,533.75

Name of creditor.	Amount.
National Bank of Lyndon	$2,921.85
National Bank of Lakeport	1,301.
Pacific National Bank	12,862.50
Pottsville State Bank	28,084.10
John Riley	647.
Nellie B. Sherman	386.70
S. A. Smith	2,123.88
B. R. Seymour	956.48
C. W. Thatcher	641.45
Wellsborough National Bank	2,562.40
C. B. Wetherby	661.
Wetherby & Page	1,302.
Blackstone Canal National Bank	6,469 90
First National Bank of Webster, Mass	6,032.89
Monona State Bank	17,518.76
National Niantic Bank	6,391.35
National Bank of Brookville	8,343.75
First National Bank of Calumet	24,784.85
First National Bank of Lake Linden	14,255.49
Merchants' & Miners' Bank of Calumet	14,128.06
Superior Savings Bank of Hancock	75,601.59
People's National Bank of Salem	18,689.67
National White River Bank	12,472.
Vilas National Bank	12,984.06
Elkhart National Bank	6,511.
First National Bank of Kewanee	57,449.35
National Bank of Vergennes	7,014.15
S. W. Pomeroy	32,342.48
First National Bank of Lockhaven	11,224.92
First National Bank of Sharon	15,982.
People's State Bank of Mazo Manie	1,298 60
Second National Bank of Mechanicsburg	$3,208.75
111 First National Bank of Merrill	4,508.87
First National Bank of Pittston	16,387.99
Citizens' National Bank of Winterset	5,791.50
Farmers' State Bank of Concord	3,623.22
Dillsbury National Bank	6,400.
First National Bank of Renovo	7,662.45
Pomeroy & Mitchell	24,875.86
First National Bank of Garner	9,756.16
Northern Trust Company as assignee of Minnesota Agricultural Co	3,900.
Marietta D. Barnes	1,274.
L. E. Clark	6,511.
Joel Lindsley, agent	12,802.55
Thomas Lowry	32,555.
Sharon National Bank	6,563.
Mrs. G. S. Barnes	295.27
Mrs. F. E. Mellen	6,781.13
H. E. Mellen	716.21
J. D. Scone	867.13
J. C. Reeve	1,935.75
James McIlwain	248.88
Monroe Cox	456.37
L. Kimball Printing Company	1,365.54
Lehigh Valley Trust & Safe Deposit Co	3,270.57
Journal Printing Company	130.88
Frank P. Bennett	112.06
Merchants' National Bank of St. Johnsbury	2,707.31
Frank P. Hulsizer	1,241.75
Tradesmen's National Bank	16,672.31
G. Walker, trustee	33,226.70

SCHEDULE "B."

Name.	Amount of stock.
Menage & Streeter, trustees	$4,600.
Louis F. Menage	230,800.
W. S. Streeter	2,000.
Edwin A. Norton	120,000.
J. M. Addeman, trustee	10,000.
Walter C. Rodman	3,900.
Montana Trust Company	94,200
H. C. Hardon	17,000.
George Kiernan	500.
H. W. Allen	900.
Cyrus J. Anderson	5,000.
Loren C. Ayer	400.
Wm. Andrews, 2nd, administrator of estate of William F. Andrews	5,000.
Elizabeth S. Allen	500.
Geo. E. Ashley	500.
F. E. Alfred	300.
Ella J. Ackley	$300.
D. R. Allison	200.
W. S. Allis	200.
W. S. Allis, trustee	200.
Mrs. E. L. Ainsley	500.
Edward P. Allinson	1,500.
Gertrude Allinson	2,500.
L. F. Aldrich	2,000.
Willis R. Armstrong	1,500.
Lewis W. Anthony	4,000.
O. H. Austin	1,500.
W. H. Blaisdell	1,000.
Addie P. Baker	1,800.
C. H. Bailey	3,000.
Geo. Brainerd	500.
Geo. P. Blair	1,000.

Name.	Amount of stock.
Nettie A. Bassett	$700.
E. Baldwin	3,000.
H. T. Baldwin	500.
Ellen Baldwin	1,500.
B. W. Braley	500.
A. P. Braley	500.
Henry Ballard	500.
F. W. Ballard	1,000.
Geo. H. Bartlett	500.
Adeline W. Bachelder	10,000.
Lydia R. Bartlett	500.
E. C. Blanchard	300.
Geo. H. Bartlett	400.
Cornelia W. Ball	600.
Elizabeth V. Bailey	400.
E. K. Baxter	2,000.
Estate of William Breck	1,000.
K. A. Benedict	2,000.
Ben. S. Benton	2,000.
Mrs. Lauraette Bingham	300.
William R. Bridges	500.
Addie I. Bibber	1,700.
Reed B. Bontecon	2,500.
112 W. A. Brooks	500.00
James W. Brock	1,000.
Alson Brown	1,000.
Fred A. Brown	500.
Elizabeth J. Brown	2,000.
Samuel N. Brown	1,500.
A. A. Brooks	500.
William Burnham	2,000.
Fannie B. Buckminster	200.
Gates B. Bullard	300.
Albert F. Burdett	1,000.
Geo. Burnham, Jr	2,000.
Joseph A. Budlong	5,000.
Geo. A. Buffum	2,000
Frank H. Clark	500.
The Capital Fire Insurance Company	1,000.
Mary E. Carpenter	500.
Harvey Carpenter	1,000.
Mrs. S. E. Caswell	500.
Frank B. Carr	400.
Maria P. Clark	800.
William H. Clark	2,500.
Isabel H. Charlton	400.
James Clark	1,000.
Helen M. Clark	1,300.
F. R. Chase	16,000.
James Caird	700.
James H. Carpenter	1,600.
H. Maria Capron	1,000.
Albert L. Calder	10,000.
Silas Carey	1,000.
James B. Case	5,000.
Ellis Clark	800.
William P. Chamberlain	1,000.
Mary E. Carpenter	600.
E. A. Chittenden	300.
W. A. Childs	800.
Daniel Coffrin	500.
Ellis M. Coe	2,500.
Charles Cobb	1,700.

Name.	Amount of stock.
John H. Converse	$6,500.
Davie Coe	1,000.
Mrs. A. A. Coe	600.
Charles H. Cross	1,000.
L. Bart Cross	1,000.
Ira Colby	600.
F. H. Colby	1,000.
William H Cook	200.
William G. Crocker	13,100.
Hezekiah Conant	5,000.
N. Stanton Coffin	1,000.
Elizabeth M. Colt	1,000.
Geo. W. Cornell	1,000.
James M. Crowell	3,000.
Mrs. K. R. Leverett Cushman	800.
Henry L. Cushman	2,000.
J. Jay Dana	1,300.
S. W. Dana	1,400.
Elmer A. Darling	5,000.
A. B. Darling	5,000.
Wilbur P. Davis	200.
William L Damon	500.
Edwin Davis	300.
Carrie L. Dean	2,500.
Alfred J. Dean	6,200.
Jane V. Delano	700.
John W. Dean	800.
W. S. Dewey	1,000.
J. J. Dewey	1,000.
D. C. Denison	500.
Elizabeth Dean	200.
William E. Dean	200.
Fred W. Dean	200.
Geo. F. Dean	200.
J. E. Dickerman	1,000.
J. E. Dwinnell	500.
Lucy F. Dillaway	500.
Clara E. Dickson	500.
William M. Dickson	700.
John C. Dickson	1,000.
H. L. Dickerman	500.
Walter Dole	500.
O. G. Dort	1,000.
Oliver H. Durrell	2,000.
Sophia G. Durrell	500.
Geo. B. Davis and Phil T. Walker, executors	500.
J. L. Edwards	1,500.
Nancy J. Elms	300.
Jacob Edwards	5,000.
W. T. Emerson, guardian	500.
Estate of Stephen Emigh	10,000.
Thomas Fairbrother	4,000.
Mrs. William P. Fairbanks	3,000.
Edward T. Fairbanks	2,500.
113 William P. Fairbanks	1,500.
Francis A. Fales	5,000.
Mrs. O. F. Fassett	3,000.
Amasa Fairbrother	1,800.
Myron Fairbrother	1,700.
Freewill Baptist Printing Establishment	2,000.
The Freewill Baptist Education Society	1,600.

Name	Amount of stock.
L. Fletcher & Co	$1,000.
Anna T. Fernald	600.
E. N. Fernald, guardian	800.
The Freewill Baptist Foreign Missionary Society	1,000.
A. Clark Fellows	3,000.
Enstace W. Fisher, executor	3,000.
The Fire Underwriters' Association	500.
Mary F. Field	1,000.
Edwin P. Fisher	100.
Isadora C. W. Fisher	500.
Launcelot Foster	1,200.
De Forest Fox	7,500.
Mrs. H. E. Folsom	200.
W. H. Ford	200.
H. R. Flower	1,300.
Sophia Flower	300.
Rufus S. Frost	1,000.
Albert G. Flower	500.
Geo. B. Ford	500.
J. M. Foss	5,000.
Marietta A. Ford	300.
Lucyett Fowler	1,700.
The Galveston Trust Company	11,000.
Joseph M. Gazzam	5,000.
Z. Herbert Gardner	2,500.
William C. Gage	200.
The Granite Savings Bank and Trust Company	2,000.
Nelson M. Gay	1,000.
Henry D. Gregory	1,500.
Geo. B. Greenslet	1,000.
Dascom Green	1,000.
J. McGregor Gibb	5,000.
H. H. Gilson	500.
E. H. Goodhue	1,000.
Timothy M. Griffin	500.
David A. Gorton	1,000.
Emiline F. Godfrey	300.
Edward H. Gourley	400.
E. Hiram Goodhue	500.
Ellen M. Goodhue	500.
J. E. Goodrich	2,000.
Egbert Guernsey	2,000.
Fitzedward Hall	6,500.
Henry R. Halloway	100.
Emma E. Haman	300.
W. H. Harrison, agent	1,000.
William Hacker	2,500.
Henry Haines	1,000.
Estate of Mrs. Caroline B. Hadley	1,500.
Perley F. Hazen	1,000.
R. W. Hardon	100.
James R. Hall	1,000.
Mabel Hall	200.
Ammi R. Hahn	2,500.
Fred S. Hall	1,000.
Earl P. Hawes	700.
Jo D. Hatch	600

Name.	Amount of stock.
Amy F. Hall, administratrix	$500.
Mrs. E. L. Hatch	500.
Samuel A. Hendrickson	5,000.
Helena Trust Company	13,700.
Ernst Hitz	100.
William Higgins	500.
Julius C. Higgins	500.
Edmund F. Higgins	1,500.
Alfred K. Hills	1,500.
Benjamin Hinman	1,000.
James A. Hilliker	30,000.
Salmon P. Hibbard	1,000.
Hadley F. Higgins	1,000.
Clara Y. Hitchcock	500.
H. A. Hitchcock	1,000.
George M. Howe	1,500.
Alex. Holmes	1,500.
Caroline Holmes	500.
O. O. Howard	500.
Grace R. Houghton	1,000.
S. Frank Holley	400.
C. P. Hogan	500.
Henry C. Howe	1,000.
J. W. Hobart	2,000.
C. T. A. Humphrey	8,000.
Thomas L. Hutchins	1,200.
John H. Husted	5,000.
114 Melancie E. Hutchins	700.
Harry M. Hutchins	800.
Sterns Hutchins	2,000.
Rubamah P. Inman	2,000.
Charles L. Jackman	200.
Stephen M. Jaquith	300.
C. H. Jones	7,000.
George E. Johnson	400.
Anna Warner Johnson	500.
C. H. Joslyn	1,000.
Peter Joslyn	500.
Keene Guaranty Savings Bank	5,000.
F. L. Keay	5,000.
Mary G. Kenney	2,500.
Charles W. King	500.
Robert R. Kimball	500.
J. E. Kimball	2,500.
James M. Kimball	2,300.
William B. Kimball	5,000.
Laura B. Kimball	700.
Mrs. George Kiernan	200.
Rudolph Koradi	200.
Marie Landon	500.
Henry S. Lawrence	2,000.
Lucia D. Lane	500.
Mary C. Lawrence, P. G. Farrell, administrators estate of H. S. Lawrence	500.
Martha H. Leverett	500.
A. T. Leach	300.
C. N. Leonard	200.
J. Bertram Lippincott	2,000.
George L. Littlefield	2,500.

Name.	Amount of stock.
H. F. Lillibridge	$3,000.
Thomas Lowry	10,000.
Frank W. Lobdell	1,000.
Manufacturers'& Merchants' Mutual Insurance Company	1,000.
Effingham Maynard	4,000.
C. H. Manchester	200.
Smith D. Mackey	2,000.
John Mason	300.
Fannie H. Maynard	2,500.
Emma L. Maynard	600.
Drusilla H. Manson	2,500.
F. S. MacKenzie	5,000.
Eliz. S. Manchester	500.
Mary E. Marks	200.
B. H. Marshall	1,500.
Frank A. Merrill	500.
Aamanda A. Menage	100.
Bessie M. Menage	100.
Edwin F. Morse	2,000.
Helen Morse	800.
H. M. Moore	1,000.
George A. Morse	700.
Charles H. Morse	1,000.
Martha J. Morse	1,000.
Bessie Owens Morse	500.
Charles C. Mumford	500.
E. B. Mulford	100.
Thomas S. McLam	1,000.
Estate of Mrs. E. McLeod	500.
Mrs. A. H. McLeod	100.
Maud E. McLeod	100.
James E. McDowell	2,000.
William McFarland	500.
Owen F. McCabe	500.
Margaret E. McLaren	300.
Lucia E. McNeil	500.
Charles J. McKenzie	5,000
Nettie L. Nay	300.
B. M. R. Nelson	1,000.
Nath. F. Nye	1,000.
Phillip H. Neher	7,500.
Neher & Carpenter	2,600.
Mrs. J. W. Nickerson	500.
L. P. Norton	1,000.
William H. Noyes	1,000.
C. H. Olmstead	2,000.
Orleans Trust Company	10.000.
E. G. Parker	3,000.
William S. Parmer	400.
A. D. Paige	600.
Howard S. Paine	1,000.
Sarah Potter Paine	1,000.
Louisa J. Prescott	300.
Julius E. Prescott	500.
Harriet M. Perry	100.
Sarah A. Perkins	1,000.
Curtis H. Pettit	1,000.
Anna M. Penniman	500.
Willie E. Prescott	200.
John B. Peckett	2,000.
Charles P. Perot	1,200.
Pennsylvania Company for Insurance on Lives and Granting Annuities, trustee for Mary Anna Gazzam, under will of John G. Reading, deceased	$5,000.
F. T. Perkins	1,200.
George H. Perkins	500.
Mary K. Perot	500.
Charles W. Pickering	300.
George A. Pillsbury	4,000.
The Philadelphia Trust, Safe Deposit and Insurance Company, trustee for Mary Anna Gazzam, under will of John G. Reading, deceased	5,000.
Edward G. Pittman	1,500.
W. N. Potter	1,000.
C. A. Prouty	2,000.
James H. Porter	1,000.
Charles H. Ranney	1,300.
Walter A. Reed	5,000.
Caleb S. Ridgeway	1,000.
A. J. Richardson	2,000.
Samuel Ricker	1,000.
Mary A. Ripley	2,200.
George C. Ripley	1,000.
Catherine F. K. Rix	2,500.
Abram T. Rose	1,000.
Homer E. Royce	2,000.
Hiram S. Rogers	600.
Robert M. Rowe	500.
Franklin B. Rogers	800.
Nancy B. Rose	200.
Abigail Rodman	300.
William H. Rowe	1,000.
Mrs. J. R. Roblin	500.
Florence P. Robinson	1,000.
Charles W. Ruiter	200.
Charles H. Sprague, trustee	1,000.
J. Bunford Samuel	2,000.
Mary J. Sanborn	1,000.
Joel F. Sanborn	1,000.
Mrs. N. C. Sanborn	2,000.
W. J. Stanton, Jr	500.
Walter R. Shaefer	200.
Charles M. Swain	1,000.
Hettie T. Sprague	1,100.
Henry S. Sprague	1,000.
Samuel S. Sprague	1,000.
John Staunton	1,500.
Wesley Sargent	2,000.
Minnie E. Stenson	500.
George W. B. Snell	100.
Mary E. Shed	1,000.
Anna K. Sheldon	1,000.
William B. Stevens	500.
Henry Smilee	2,000.
Nellie S. Baker Smith	2,000.
Walter P. Smith	500.
Susan H. Smith	500.

Name.	Amount of stock.	Name.	Amount of stock.
Mary L. Smith	$500.	Mary L. Watson	$1,000.
Isaac B. Smith	1,000.	Samuel W. Wray	2,000.
Fred E. Smith	500.	Mary E. Ward	2,500.
William J. Simmons	3,000.	George W. Wagg	2,500.
James F. Shipman	200.	W. D. Washburn	1,000.
J. Elliott Smith	1,000.	Alfred E. Watson	1,000.
Charles J. Shoemaker	100.	Josiah A. Wait	3,000.
Carrie M. Story	1,500.	R. C. Waite	500.
A. C. Stocking	300.	Charles W. West	2,000.
Jos. C. Snow	3,000.	Edward G. West	2,000.
Melanie M. Stussy	900.	Albert B. Weimer	100.
Thomas Stuart	2,500.	Rebecca H. Weld	1,000.
Elbra S. Taggart	1,500.	Gardner Wetherbee	5,000.
A. P. Taft	1,000.	Orin Westcott	1,000.
E. D. Thayer	1,000.	H. F. Wetherby	1,000.
Charles S. Tanner	500.	Henry L. Wetherby	800.
James M. Tyler	500.	E. M. Weston	200.
Elmira O. Titus	2,300.	Charles F. Wignall	500.
J. O. Tilton	500.	J. F. Wright	2,000.
Jeremiah D. Tilton	1,000.	Sarah C. Wilkes	400.
Jno. C. Tilton	100.	Austin Wright	100.
Stephen H. Tilden	800.	Charles H. Wilson	1,000.
H. J. Towne	900.	Squires J. Wilson	400.
George R. Thompson	300.	Calvin Wilcox	1,000.
William Toothe	2,500.	Alpheus Wilt	2,000.
Mrs. A. G. Thompson	200.	Mary Wilt	2,000.
Martha Towle	500.	Helen G. Williamson	1,000.
George Towle	500.	Mrs. S. L. Wiswell	500.
Walter V. Towle	100.	Florence Wilson	1,000.
Mrs. Geo. Towle	200.	Mrs. D. Q. Woodruff	100.
Payson Tucker	2,500.	Irving S. Woodruff	100.
Richard Tull	300.	Horace N. Woodruff	100.
L. A. Tooksberry	1,000.	Rawson L. Wood	2,000.
Geo. Turner	1,000.	B. W. Woodard	2,000.
Cyrus Underwood	7,600.	H. E. & D. Q. Woodruff	2,000.
Edwin Underwood	30,000.	William J. Wyley	500.
116 George M. Vail	200.	W. A. Wheeler	500.
Charles T. Walter	100.		

117 STATE OF MINNESOTA, } ss:
County of Hennepin, }

District Court, Fourth Judicial District.

I, C. N. Dickey, clerk of the above-named court, do hereby certify that I have compared the papers in writing to which this certificate is attached, with the original summons, amended complaint with Exhibits "A" and "B" attached thereto, findings of fact and conclusions of law and order for judgment with Schedule "A" attached thereto, acceptance of Receiver William E. Hale, bond of Receiver William E. Hale and judgment and decree in the action therein entitled, as the same appear of record and on file in the said clerk's office at the court-house in said Hennepin county, Minnesota, and find the same to be true and correct copies thereof, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed

the seal of said district court, at the city of Minneapolis, in said county, this 21st day of September, A. D. 1898.

C. N. DICKEY,
Clerk of District Court.

[SEAL.]

(Cancelled 10-cent stamp affixed here.)

STATE OF MINNESOTA, } ss:
County of Hennepin, }

I, Charles B. Elliott, presiding judge of the district court for the fourth judicial district, State of Minnesota, do hereby certify that C. N. Dickey, whose name is subscribed to the foregoing certificate of attestation, is and was at the time of making the same, the clerk of said district court, in and for the county of Hennepin, in said State of Minnesota, duly elected and qualified, the keeper of its seal and the custodian of its files and records, and that his official acts are entitled to full faith and credit; that I am well acquainted with the handwriting of said clerk, and verily believe his signature to said certificate to be genuine, and that said certificate is in due form and by the proper officer.

Witness my hand at the city of Minneapolis, in said county of Hennepin and State of Minnesota, this 21st day of September, A. D. 1898.

CHARLES B. ELLIOTT,
Presiding Judge.

(Cancelled 10-cent stamp affixed here.)

118 STATE OF MINNESOTA, } ss:
County of Hennepin, }

I, C. N. Dickey, clerk of the district court, fourth judicial district, in and for the county of Hennepin, State of Minnesota, do hereby certify that Honorable Charles B. Elliott, whose name is subscribed to the foregoing certificate of attestation, is and was at the time of making the same, presiding judge of said district court for the fourth judicial district, State of Minnesota, duly elected and qualified, and that his official acts are entitled to full faith and credit; that I am well acquainted with the handwriting of said judge, and verily believe his signature to said certificate to be genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at the city of Minneapolis, in said county, this 21st day of September, A. D. 1898.

[SEAL.] C. N. DICKEY, *Clerk.*

(Cancelled 10-cent stamp affixed here.)

Endorsed: 26. October sess., 1898. Circuit court U. S., E. D. Penna. In equity. W. E. Hale, *et al. vs.* Allison *et al.* Bill. Chas. C. Lister, M. H. Boutelle, for comps. Filed Nov. 22, 1898. Samuel Bell, clerk, per H. R.

In the United States Circuit Court for the Eastern District of Pennsylvania, October Sessions, 1898. In Equity.

ARTHUR R. ROGERS and W. E. HALE, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Complainants,

vs.

EDWARD P. ALLISON, GERTRUDE ALLISON, WILLIS R. ARMstrong, William Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emeline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Schaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurances on Lives and Granting Annuities (a Corporation), Trustee for Mary A. Gazzam, and The Philadelphia Trust, Safe Deposit and Insurance Company (a Corporation), Trustee for Mary A. Gazzam, Defendants.

119 No. 26.

Demurrer.

The Philadelphia Trust, Safe Deposit and Insurance Company, trustee for Mary A. Gazzam, defendants, demur to the whole bill of complaint, and assign in support of their demurrer the following reasons:

1. It appears from the bill and exhibits that these defendants were not served, and received no notice of the proceedings instituted by Rogers in the Minnesota court, and that by reason of such lack of service and notice, said proceedings are not in any way conclusive or binding upon them. The present bill is therefore defective for want of proper parties, viz., the Northwestern Guaranty Loan Company and the Minneapolis Trust Company, receiver of said Northwestern Guaranty Loan Company.

2. The bill, inasmuch as said proceedings in the Minnesota court instituted by said Rogers are not in any way binding upon these defendants, is defective in not joining all the stockholders of the Northwestern Guaranty Loan Company as parties defendant.

3. The bill is multifarious by reason of its joinder of one of the alleged creditors, Arthur E. Rogers, with W. E. Hale, alleged receiver.

4. The bill is defective, so far as said Arthur R. Rogers is made a

party complainant, because of the fact that his claim amounts to less than $2,000, and is not within the jurisdiction of this court.

5. The bill, if creditors must be joined as parties plaintiff, is defective, for want of proper parties plaintiff, in not joining all the creditors in whose favor it is alleged a decree was made in the Minnesota court.

6. The bill as filed does not state anything warranting relief in equity. If the decree made in the Minnesota court was of no
120 legal validity, no proceedings thereupon will lie. If it was of legal validity, there is an ample remedy at common law for any rights thereunder which may exist in the receiver or in any other person.

7. If the decree entered in Minnesota has legal validity, the remedy is solely by an action at common law against each stockholder individually, and not against all the stockholders, or against some of them, jointly.

8. W. E. Hale, the alleged receiver, appointed under the proceedings in Minnesota, has no right to prosecute any proceedings, in equity or otherwise, against these defendants, in any other court than that by which he was appointed.

9. The bill discloses no equity entitling the complainants to a decree against these defendants.

10. The relief sought for is one which no court of equity outside of the Commonwealth of Minnesota is required to administer.

11. The proceedings in Minnesota, upon which the bill in equity is based, have no legal validity as against these defendants, who were not parties notified or served with process therein, and cannot be enforced against them in any form of proceeding.

12. The bill is defective in that it fails to aver that there are no creditors resident in Pennsylvania to whom the resident debtors in Pennsylvania, if liable at all to account, should account.

13. The bill is defective because it appears affirmatively from the exhibits attached thereto and made part thereof, that there are creditors resident in this Commonwealth to whose claims the defendants' debts, if any are owing, should be applied, if the same are enforcible outside of the limits of the State of Minnesota.

TOWNSEND, ELLIOTT & TOWNSEND,
JOHN G. JOHNSON, *For Defendants.*

We certify that in our opinion the foregoing demurrer is well founded in point of law.

TOWNSEND, ELLIOTT & TOWNSEND.
JOHN G. JOHNSON.

PHILADELPHIA COUNTY, *ss:*

Henry B. Russell, being duly sworn, says that he is the assistant treasurer of the Philadelphia Trust, Safe Deposit and Insurance Company, trustee for Mary A. Gazzam, a defendant in the above-entitled cause, and that the foregoing demurrer is not interposed for delay.

H. B. RUSSELL.

121 Sworn to and subscribed before me, this ninth day of February, A. D. 1899.

WM. L. WEAVER,
[SEAL.] *Notary Public.*

Endorsed: No. 26. October sessions, 1898. In the circuit court of the United States, eastern district of Pennsylvania. In equity. Arthur R. Rogers and W. E. Hale, receiver, etc., *vs.* Edward P. Allison *et al.* Demurrer of the Philadelphia Trust, Safe Deposit and Insurance Company, trustee for Mary A. Gazzam. Townsend, Elliott & Townsend, John G. Johnson, for defendants. Filed Feb. 2, 1899. Samuel Bell, clerk, H. R.

In the United States Circuit Court for the Eastern District of Pennsylvania, October Sessions, 1898. In Equity.

ARTHUR R. ROGERS and W. E. HALE, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Complainants,

vs.

EDWARD P. ALLISON, GERTRUDE ALLISON, WILLIS R. ARMstrong, William Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emeline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Schaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania
122 Company for Insurances on Lives and Granting Annuities (a Corporation), Trustee for Mary A. Gazzam, and The Philadelphia Trust, Safe Deposit and Insurance Company (a Corporation), Trustee for Mary A. Gazzam, Defendants. } No. 26.

Demurrer.

John H. Converse, William Burnham, George Burnham, Jr., James M. Crowell, Charles M. Swain, Edward P. Allinson, Willis R. Armstrong, Samuel A. Hendrickson, Rudolph Koradi, Edwin F. Morse, George A. Morse, Walter C. Rodman, Abigail Rodman, A. J. Richardson, Walter R. Schaefer, Charles J. Shoemaker, Albert B. Weimer, Charles F. Wignall, and Samuel W. Wray, defendants,

demur to the whole bill of complaint, and assign in support of their demurrer the following reasons:

1. It appears from the bill and exhibits that these defendants were not served and received no notice of the proceedings instituted by Rogers in the Minnesota court, and that by reason of such lack of service and notice, said proceedings are not in any way conclusive or binding upon them. The present bill is therefore defective for want of proper parties defendant, viz., the Northwestern Guaranty Loan Company and the Minneapolis Trust Company, receiver of said Northwestern Guaranty Loan Company.

2. The bill, inasmuch as said proceedings in the Minnesota court instituted by said Rogers are not in any way binding upon these defendants, is defective in not joining all the stockholders of the Northwestern Guaranty Loan Company as parties defendant.

3. The bill is multifarious by reason of its joinder of one of the alleged creditors, Arthur R. Rogers, with W. E. Hale, alleged receiver.

4. The bill is defective, so far as said Arthur R. Rogers is made a party complainant, because of the fact that his claim amounts to less than $2,000, and is not within the jurisdiction of this court.

5. The bill, if creditors must be joined as parties plaintiff, is defective for want of proper parties plaintiff in not joining all the creditors in whose favor it is alleged a decree was made in the Minnesota court.

6. The bill as filed does not state anything warranting relief in equity. If the decree made in the Minnesota court was of no legal validity, no proceedings thereupon will lie. If it was of legal validity, there is an ample remedy at common law for any rights thereunder which may exist in the receiver or in any other person.

7. If the decree entered in Minnesota has legal validity, the remedy is solely by an action at common law against each stockholder individually, and not against all the stockholders, or against some of them, jointly.

123 8. W. E. Hale, the alleged receiver, appointed under the proceedings in Minnesota, has no right to prosecute any proceedings, in equity or otherwise, against these defendants, in any other court than that by which he was appointed.

9. The bill discloses no equity entitling the complainants to a decree against these defendants.

10. The relief sought for is one which no court of equity outside of the Commonwealth of Minnesota is required to administer.

11. The proceedings in Minnesota, upon which the bill in equity is based, have no legal validity as against these defendants who were not parties notified or served with process therein, and cannot be enforced against them in any form of proceeding.

12. The bill is defective in that it fails to aver that there are no creditors resident in Pennsylvania, to whom the resident debtors in Pennsylvania, if liable at all to account, should account.

13. The bill is defective because it appears affirmatively from the exhibits attached thereto and made part thereof that there are creditors resident in this Commonwealth to whose claim the defend-

ants' debts, if any are owing, should be applied, if the same are enforcible outside of the limits of the State of Minnesota.

ALBERT B. WEIMER,
WALTER U. RODMAN,
JOHN G. JOHNSON,
For Defendants.

We certify that in our opinion the foregoing demurrer is well founded in point of law.

ALBERT B. WEIMER.
WALTER C. RODMAN.
JOHN G. JOHNSON.

PHILADELPHIA COUNTY, *ss:*

Wm. Burnham, being duly sworn, says that he is one of the defendants in the above-entitled cause, and that the foregoing demurrer is not interposed for delay.

WM. BURNHAM.

Sworn to and subscribed before me this 10th day of February, A. D. 1899.

ULYSEES S. KOONS,
[SEAL.] *Notary Public.*

Endorsed: No. 26. October sessions, 1898. In the circuit court of the United States, eastern district of Pennsylvania. In equity. Arthur R. Rogers and W. E. Hale, receiver, etc., *vs.* Edward
124 P. Allinson, *et al.* Demurrer of John H. Converse, William Burnham, George Burnham, Jr., James M. Crowell, Charles M. Swain, E. P. Allinson, W. R. Armstrong, S. A. Hendrickson, Rudolph Koradi, Edwin F. Morse, George A. Morse, Walter C. Rodman, A. J. Richardson, Abagail Rodman, Walter R. Schaefer, Charles J. Shoemaker, Albert B. Weimer, Charles Wignall and Samuel W. Wray. Albert B. Weimer, Walter C. Rodman, John G. Johnson, for defendants. Filed February 15, 1899. Samuel Bell, clerk, per G. B., Jr.

In the United States Circuit Court for the Eastern District of Pennsylvania, October Sessions, 1898. In Equity.

ARTHUR R. ROGERS and W. E. HALE, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Complainants,

vs.

EDWARD P. ALLISON, GERTRUDE ALLISON, WILLIS R. ARMstrong, William Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emeline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Schaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurances on Lives and Granting Annuities (a Corporation), Trustee for Mary A. Gazzam, and The Philadelphia Trust, Safe Deposit, and Insurance Company (a Corporation), Trustee for Mary A. Gazzam, Defendants. } No. 26.

125 *Demurrer.*

Henry Haines demurs to the whole bill of complaint, and assigns in support of his demurrer the following reasons:

1. It appears from the bill and exhibits that these defendants were not served, and received no notice of the proceedings instituted by Rogers in the Minnesota court, and that by reason of such lack of service and notice, said proceedings are not in any way conclusive or binding upon them. The present bill is, therefore, defective for want of proper parties, viz., the Northwestern Guaranty Loan Company and the Minneapolis Trust Company, receiver of said Northwestern Guaranty Loan Company.

2. The bill, inasmuch as said proceedings in the Minnesota court instituted by said Rogers are not in any way binding upon these defendants, is defective in not joining all the stockholders of the Northwestern Guaranty Loan Company as parties defendant.

3. The bill is multifarious by reason of its joinder of one of the alleged creditors, Arthur R. Rogers, with W. E. Hale, alleged receiver.

4. The bill is defective, so far as said Arthur R. Rogers is made a party complainant, because of the fact that his claim amounts to less than $2,000, and is not within the jurisdiction of this court.

5. The bill of creditors must be joined as parties plaintiff, is de-

fective, for want of proper parties plaintiff, in not joining all the creditors in whose favor it is alleged a decree was made in the Minnesota court.

6. The bill as filed does not state anything warranting relief in equity. If the decree made in the Minnesota court was of no legal validity, no proceedings thereupon will lie. If it was of legal validity, there is an ample remedy at common law for any rights thereunder which may exist in the receiver or in any other person.

7. If the decree entered in Minnesota has legal validity, the remedy is solely by an action at common law against each stockholder individually, and not against all the stockholders, or against some of them, jointly.

8. W. E. Hale, the alleged receiver, appointed under the proceedings in Minnesota, has no right to prosecute any proceedings, in equity or otherwise, against these defendants, in any other court than that by which he was appointed.

9. The bill discloses no equity entitling the complainants to a decree against these defendants.

10. The relief sought for is one which no court of equity outside of the Commonwealth of Minnesota is required to administer.

11. The proceedings in Minnesota, upon which the bill in equity is based, have no legal validity as against these defendants,
126 who are not parties notified or served with process therein, and cannot be enforced against them in any form of proceeding.

12. The bill is defective in that it fails to aver that there are no creditors resident in Pennsylvania to whom the resident debtors in Pennsylvania, if liable at all to account, should account.

13. The bill is defective because it appears affirmatively from the exhibits attached thereto and made part thereof, that there are creditors resident in this Commonwealth to whose claims the defendants' debts, if any are owing, should be applied, if the same are enforcible outside of the limits of the State of Minnesota.

J. CAMPBELL LANCASTER,
For Defendants.

We certify that in our opinion the foregoing demurrer is well founded in point of law.

J. CAMPBELL LANCASTER.

PHILADELPHIA COUNTY, *ss:*

Henry Haines, being duly sworn, says that the foregoing demurrer is not interposed for delay.

HENRY HAINES.

Affirmed to and subscribed before me this — day of February, A. D. 1899.

CHAS. H. PILE,
[SEAL.] *Notary Public.*

Endorsed: No. 26. October sessions, 1898. In the circuit court of the United States eastern district of Pennsylvania. In equity. Arthur R. Rogers and W. E. Hale, receiver, etc., *vs.* Edward P. Al-

lison, *et al.* Demurrer of Henry Haines. Malcolm G. Campbell, J. Campbell Lancaster, for defendants. Filed February 15, 1899, Samuel Bell, clerk, per G. B., Jr.

Circuit Court of the United States, October Sessions, 1898.

HALE, Receiver, *vs.* ALLISON ET AL. } No. 26.

127 *Demurrer.*

Mary K. Perot, one of the defendants above-named, demurs to the whole bill of complaint, and assigns in support of her demurrer the following reasons:

1. It appears from the bill and exhibits that this defendant was not served, and received no notice of the proceedings instituted by Rogers in the Minnesota court, and by reason of such lack of service and notice, said proceedings are not in any way conclusive or binding upon her. The present bill is, therefore, defective for want of proper parties defendant, viz: The Northwestern Guaranty Loan Company and The Minneapolis Trust Company, receiver of said Northwestern Guaranty Loan Company.

2. Inasmuch as said proceedings in the Minnesota court instituted by said Rogers are not in any way binding upon this defendant, the bill is defective in not joining all the stockholders of the Northwestern Guaranty Loan Company as parties defendant.

3. The bill is multifarious by reason of its joinder of one of the alleged creditors Arthur R. Rogers with W. E. Hale, alleged receiver.

4. The bill is defective so far as said Arthur R. Rogers is made a party complainant, because of the fact that his claim amounts to less than two thousand dollars, and is not within the jurisdiction of this court.

5. If the creditors must be joined as parties plaintiff, the bill is defective for want of proper parties plaintiff, in not joining all the creditors in whose favor it is alleged a decree was made in the Minnesota court.

6. The bill as filed does not state anything warranting relief in equity. If the decree made in the Minnesota court was of no legal validity, no proceedings thereof will lie. If it was of legal validity, there is an ample remedy at common law for any rights thereunder which may exist in the receiver or in any other person.

7. If the decree entered in Minnesota has legal validity the remedy is solely by an action at common law against each stockholder individually, and not against all the stockholders or against some of them jointly.

8. W. E. Hale, the alleged receiver appointed under the proceedings in Minnesota, has no right to prosecute any proceedings in equity or otherwise against this defendant, in any other court than that by which he was appointed.

9. The bill discloses no equity entitling the complainants to a decree against this defendant.

10. The relief sought for is one which no court of equity outside of the Commonwealth of Minnesota is required to administer.

128 11. The proceedings in Minnesota upon which the bill in equity is based, have no legal validity as against this defendant, who was not a party notified or served with process therein, and cannot be enforced against her in any form of proceeding.

12. The bill is defective in that it fails to aver that there are no creditors residents of Pennsylvania to whom the resident debtors in Pennsylvania, if liable at all to account, should account.

13. The bill is defective because it appears affirmatively from the exhibits attached thereto and made part thereof that there are creditors resident in this Commonwealth, to whose claims the defendant's debt, if any is owing, should be applied if the same is enforced outside of the State of Minnesota.

WILLIAM C. HANNIS,
For Defendant Mary K. Perot.

I certify that in my opinion the foregoing demurrer is well founded in point of law.

WILLIAM C. HANNIS.

PHILADELPHIA COUNTY, *ss:*

William C. Hannis, being duly sworn, says that the foregoing demurrer is not interposed for the purpose of delay.

WM. C. HANNIS.

Sworn to and subscribed before me this seventeenth day of February, A. D. 1899.

WINFIELD S. SHEARD,
Notary Public.

[SEAL.]

Endorsed: No. 26. Oct. sessions, 1898. Circuit court of the U. S. Hale, receiver, *vs.* Allison, *et al.* Demurrer of Mary K. Perot. William C. Hannis, attorney-at-law, Drexel building, Philadelphia. Filed February 18, 1899, Samuel Bell, clerk, per G. B., Jr.

In the United States Circuit Court for the Eastern District of Pennsylvania. In Equity.

129 ARTHUR R. ROGERS and W. E. HALE, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Complainants,

vs.

EDWARD P. ALLISON, GERTRUDE ALLISON, Willis R. Armstrong, William Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emeline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Schaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurances on Lives and Granting Annuities (a Corporation), Trustee for Mary A. Gazzam, and The Philadelphia Trust, Safe Deposit and Insurance Company (a Corporation), Trustee for Mary A. Gazzam, Defendants.

No. 26.
October Sessions, 1898.

Demurrer.

Joseph M. Gazzam, one of the defendants, demurs to the whole bill of complaint, and assigns in support of his demurrer the following reasons:

1. It appears from the bill and exhibits that defendant was not served and received no notice of the proceedings instituted by Rogers in the Minnesota court, and that by reason of such lack of service and notice, said proceedings are not in any way conclusive or binding upon him. The present bill is, therefore, defective for want of proper parties defendant, viz, The Northwestern Guaranty Loan Company and The Minneapolis Trust Company, receiver of said Northwestern Guaranty Loan Company.

2. The bill, inasmuch as said proceedings in the Minnesota court instituted by said Rogers are not in any way binding upon defend-

ant, is defective in not joining all the stockholders of the Northwestern Guaranty Loan Company as parties defendant.

130 3. The bill is multifarious by reason of its joinder of one of the alleged creditors, Arthur R. Rogers, with W. E. Hale, alleged receiver.

4. The bill is defective, so far as said Arthur R. Rogers is made a party complainant, because of the fact that his claim amounts to less than $2,000 and is not within the jurisdiction of this court.

5. The bill, if creditors must be joined as parties plaintiff, is defective for want of proper parties plaintiff in not joining all the creditors in whose favor it is alleged a decree was made in the Minnesota court.

6. The bill as filed does not state anything warranting relief in equity. If the decree made in the Minnesota court was of no legal validity, no proceedings thereupon will lie. If it was of legal validity, there is an ample remedy at common law for any rights thereunder which may exist in the receiver or in any other person.

7. If the decree entered in Minnesota has legal validity, the remedy is solely by an action at common law against each stockholder individually, and not against all the stockholders, or against some of them jointly.

8. W. E. Hale, the alleged receiver, appointed under the proceedings in Minnesota, has no right to prosecute any proceedings, in equity or otherwise, against defendant, in any other court than that by which he was appointed.

9. The bill discloses no equity entitling the complainants to a decree against defendant.

10. The relief sought for is one which no court of equity outside of the Commonwealth of Minnesota is required to administer.

11. The proceedings in Minnesota, upon which the bill in equity is based, have no legal validity as against defendant who was not a party notified or served with process therein, and cannot be enforced against him in any form of proceeding.

12. The bill is defective in that it fails to aver that there are no creditors resident in Pennsylvania to whom the resident debtors in Pennsylvania, if liable at all to account, should account.

13. The bill is defective because it appears affirmatively from the exhibits attached thereto and made part thereof that there are creditors resident in this Commonwealth to whose claim the defendant's debt, if any is owing, should be applied, if the same is enforcible outside of the limits of the State of Minnesota.

WILLIAM S. WALLACE,
For Defendant Joseph M. Gazzam.

I certify that in my opinion the foregoing demurrer is well founded in point of law. WILLIAM S. WALLACE.

131 PHILADELPHIA COUNTY, *ss:*

Joseph M. Gazzam, being duly sworn, says that he is one of the defendants in the above-entitled cause, and that the foregoing demurrer is not interposed for delay.

JOSEPH M. GAZZAM.

Sworn to and subscribed before me, this 23d day of February, A. D. 1899.

EDWARD FELL LUKENS,
Notary Public.

[SEAL.]

Endorsed: No. 26. October sessions, 1898. In the circuit court of the United States for the eastern district of Pennsylvania. In equity. Arthur R. Rogers and W. E. Hale, receiver, etc., *vs.* Edward P. Allison, *et al.* Demurrer of Joseph M. Gazzam, one of the defendants. William S. Wallace for defendant. Filed Feb. 23, 1899, Samuel Bell, clerk, per G. B., Jr.

In the United States Circuit Court for the Eastern District of Pennsylvania. In Equity.

ARTHUR W. ROGERS and W. E. HALE, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Complainants,

vs.

EDWARD P. ALLISON, GERTRUDE ALLISON, Willis R. Armstrong, William Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emeline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Schaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurances on Lives and Granting Annuities (a Corporation), Trustee for Mary A. Gazzam, and The Philadelphia Trust, Safe Deposit and Insurance Company (a Corporation), Trustee for Mary A. Gazzam, Defendants.

No. 26.
October Sessions, 1898.

132

Demurrer.

J. Bertram Lippincott, defendant, demurs to the whole bill of complaint, and assigns in support of his demurrer the following reasons:

1. It appears from the bill and exhibits that this defendant was not served and received no notice of the proceedings instituted by Rogers in the Minnesota court, and that by reason of such lack of service and notice, said proceedings are not in any way conclusive or binding upon him. The present bill is, therefore, defective for want of proper parties defendant, viz., The Northwestern Guaranty Loan Company and The Minneapolis Trust Company, receiver of said Northwestern Guaranty Loan Company.

2. The bill, inasmuch as said proceedings in the Minnesota court instituted by said Rogers are not in any way binding upon this defendant is defective in not joining all the stockholders of the Northwestern Guaranty Loan Company as parties defendant.

3. The bill is multifarious by reason of its joinder of one of the alleged creditors, Arthur R. Rogers, with W. E. Hale, alleged receiver.

4. The bill is defective, so far as said Arthur R. Rogers is made a party complainant, because of the fact that his claim amounts to less than $2,000 and is not within the jurisdiction of this court.

5. The bill, if creditors must be joined as parties plaintiff, is defective for want of proper parties plaintiffs in not joining all the creditors in whose favor it is alleged a decree was made in the Minnesota court.

6. The bill as filed does not state anything warranting relief in equity. If the decree made in the Minnesota court was of no legal validity, no proceedings thereupon will lie. If it was of legal validity, there is an ample remedy at common law for any rights thereunder which may exist in the receiver or in any other person.

7. If the decree entered in Minnesota has legal validity, the
133 remedy is solely by an action at common law against each stockholder individually; and not against all the stockholders or against some of them, jointly.

8. W. E. Hale, the alleged receiver, appointed under the proceedings in Minnesota, has no right to prosecute any proceedings, in equity or otherwise, against these defendants, in any other court than that by which he was appointed.

9. The bill discloses no equity entitling the complainants to a decree against this defendant.

10. The relief sought for is one which no court of equity outside of the Commonwealth of Minnesota is required to administer.

11. The proceedings in Minnesota, upon which the bill in equity is based, have no legal validity as against this defendant who was not a party notified or served with process therein, and cannot be enforced against him in any form of proceeding.

12. The bill is defective in that it fails to aver that there are no creditors resident in Pennsylvania to whom the resident debtors in Pennsylvania, if liable at all to account, should account.

13. The bill is defective because it appears affirmatively from the exhibits attached thereto and made part thereof that there are creditors resident in this Commonwealth to whose claim the defend-

ant's debts, if any are owing, should be applied, if the same are forcible outside of the limits of the State of Minnesota.

BYERLY HART,
For Defendant.

I certify that in my opinion the foregoing demurrer is well founded in point of law.

BYERLY HART.

PHILADELPHIA COUNTY, *ss:*

J. Bertram Lippincott, being duly sworn, says that he is one of the defendants in the above-entitled cause, and that the foregoing demurrer is not interposed for delay.

J. BERTRAM LIPPINCOTT.

Sworn to and subscribed before me, this twentieth day of February, A. D. 1899.

ALLEN SHRYOCK,
[SEAL.] *Notary Public.*

Endorsed: No. 26. October sessions, 1898. In the circuit court of the United States, eastern district of Pennsylvania. In equity. Arthur R. Rogers and W. E. Hale, receiver, etc., *vs.* Edward P. Allison, *et al.* Demurrer of J. Bertram Lippincott. Byerly Hart, for defendant. Filed Feb. 24, 1899, Samuel Bell, clerk, H. R.

134 In the United States Circuit Court for the Eastern District of Pennsylvania. In Equity.

ARTHUR R. ROGERS and W. E. HALE, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Complainants,

vs.

EDWARD P. ALLINSON, GERTRUDE ALLINSON, Willis R. Armstrong, William Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emeline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Schaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurances on Lives and Granting Annuities (a Corporation), Trustee for Mary A. Gazzam, and The Philadelphia Trust, Safe Deposit and Insurance Company (a Corporation), Trustee for Mary A. Gazzam, Defendants.

No. 26.
October Sessions, 1898.

The plaintiffs in the above-entitled case join issue with the defendants upon the matters of law alleged in the demurrers filed by said defendants.

M. H. BOUTELLE,
C. C. LISTER,
Attorneys for Plaintiffs.

January 18, 1900.

To clerk U. S. C. C.

135 Endorsed: 26. Oct. sess., 1898. U. S. C. C. C. E. D. of Pa. Ha e, receiver, *et al.*, *vs.* Allinson, *et al.* Replication. M. H. Boutelle, C. C. Lister. Filed Jan. 19, 1900, Samuel Bell, clerk, H. R.

15—290

In the United States Circuit Court for the Eastern District of Pennsylvania.

W. E. HALE, as Receiver, Complainant, vs. EDWARD P. ALLISON ET AL., Defendants. } No. 26. October Sessions, 1898.

Know all me- by these presents, that we, W. E. Hale, as receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company, insolvent, as principal, and Fidelity and Deposit Company of Maryland, as surety, are holden and stand firmly bound unto Edward P. Allison, *et al*, the above-named defendants, in the penal sum of three hundred dollars ($300), for the payment whereof well and truly to be made unto the said Edward P. Allison *et al.*, defendant- above named, their heirs, executors, administrators, and assigns, we bind ourselves, our successors, representatives and assigns jointly and firmly by these presents.

Upon condition nevertheless, that whereas, the said W. E. Hale, as receiver as aforesaid, has commenced an action in the above-named court against the above-named defendants.

Now, therefore, if the said W. E. Hale, as receiver as aforesaid, shall well and truly pay all the costs that may be awarded against him in the above-named court in the above-entitled action, and in case of an appeal shall well and truly pay all the costs that may be awarded against him in the United States circuit court of appeals for the third circuit, then this obligation shall be void, otherwise to remain in full force and virtue.

In witness whereof, the said W. E. Hale, as said receiver, has hereunto affixed his hand and seal, and the said Fidelity and Deposit Company of Maryland has caused these presents to be executed by a member of its local board of directors, and attested by its agents and its corporate seal to be hereto attached, on this 15th day of January, 1900.

WILLIAM E. HALE, [SEAL.]
As Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Insolvent.

136 FIDELITY AND DEPOSIT CO. OF MD.
HOWARD W. LIPPINCOTT,
Local Director.

Attest: HERMAN HOOPES, *Gen'l Agent.*

[Seal of Company.]

In presence of—

H. A. CHAFFEE,
A. M. HIGGINS,
As to signature of W. E. Hale.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Be it known that on this 15th day of January, 1900, before me personally appeared W. E. Hale, receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company, insolvent, to me known to be the person who executed the foregoing bond, and acknowledged that he executed the same for the uses and purposes therein expressed.

ARTHUR M. HIGGINS,
Notary Public, Hennepin County, Minnesota.

[NOTARIAL SEAL.]

Endorsed: 26. October sess., '98. United States circuit court eastern district of Pennsylvania. W. E. Hale, as receiver, complainant, *vs.* Edward P. Allison, *et al.*, defendants. Bond for costs. Filed April 11, 1900, Samuel Bell, clerk.

And afterwards, to wit, on the 23d day of April, 1900, came the parties aforesaid by their counsel aforesaid and this cause being called for argument surdemurrers to bill of complaint, and having been argued by counsel for the respective parties and the court not being fully advised in the premises takes further time for the consideration of the same.

And afterwards, to wit, on the 11th day of June, 1900, come the parties aforesaid by their counsel aforesaid and the court being fully advised in the premises renders the following opinion, viz:

United States Circuit Court, Eastern District of Pennsylvania. In Equity.

137 HALE ET AL. *vs.* AILINSON ET AL. } No. 26. October Session, 1898.

Demurrer to Bill.

MCPHERSON, *J.:*

The complainant is the receiver of the Northwestern Guaranty Loan Company, a Minneapolis corporation, and has been specially appointed by a court of that State to enforce the additional liability that is imposed upon stockholders in certain classes of corporations by the Minnesota constitution. The defendants are Pennsylvania stockholders, forty-seven in number, who were not served with process, and did not appear in the proceeding by which the Minnesota court ascertained what debts were due by the corporation, and how large the assessment upon each stockholder should be. The assessment was fixed at 100 per cent., and recovery is therefore sought of the whole amount which each defendant can be called upon to pay. The demurrer attacks the bill upon several grounds of which the only one, in my opinion, is necessary to be considered, namely: that the complainant has an adequate remedy at law.

As it stands, the bill is brought by two complainants, one being the creditor that began the foregoing proceedings in Minnesota, and the other being the receiver that was thereupon specially appointed—both professing to sue in this jurisdiction for the equal benefit of all the creditors of the company. The joinder of these two complainants is one of the grounds of demurrer; but, as leave has been asked, and is now granted, to dismiss the creditor from the suit, I shall treat the bill as if it had been brought in the first instance by the receiver alone. But, even this considered, I think it cannot be sustained, because the complainant's remedy is properly at law. I have heretofore had occasion to decide a similar question in Tomkins *v.* Craig, 93 Federal, 885, and without repeating the reason there given (to which I now take leave to refer) I adhere to that decision. It is no doubt true, that the authorities are not uniform upon the point under consideration, but I think this much at least may be safely affirmed: Equity does not under all circumstances acquire jurisdiction of a controversy against numerous defendants, upon the single ground that a multitude of suits at law might thereby be avoided. For example: If the receiver of an insolvent bank should come into possession of fifty promissory notes, apparently due to the bank from as many separate debtors, he certainly would not join these defendants in one equitable proceeding based upon all the notes, merely because fifty suits at law might thereby be avoided. Neither would a court of equity acquire jurisdiction in such a case upon the additional ground, that the money, when collected, would become part of a fund that would be distributed under the court's control. The principles that might govern the distribution would not change the character of the various liabilities sought to be enforced by the bill; and the receiver would be obliged to sue at law upon the separate legal obligation created by each contract, although the money realized by the suits might be afterwards distributed by a court of equity in accordance with equitable principles. Neither would the court acquire jurisdiction in such a case if the further ground be added, that the receiver's right of action against each defendant was similar to his right against every other—being a right in each case to sue upon a contract made with the same insolvent, and evidenced by a written instrument essentially of the same description. Moreover, if such a bill could be filed in equity merely because a multitude of suits at law would thereby be avoided, by what rule of computation should the objectionable multitude be determined? Would two suits be sufficiently numerous? Or five, or twenty-five? And, if one bill might be filed because there were fifty defendants, why might not two bills be filed, each selecting twenty-five defendants? I see no equitable principle, therefore, in the mere consideration that the receiver might have a legal right to sue many debtors separately upon obligations similar in kind; or in the additional fact that the money recovered upon such obligations might afterwards be distributed under the supervision of a court of equity.

138

Something more is necessary before the equitable jurisdiction will attach, and I think the needful something is this: Before a contro-

versy between a receiver and numerous separate debtors of the corporation can be joined in one proceeding, there must be some common relation, or common interest, or common question, to serve as a basis for the joinder. In the absence of such a relation, or interest, or question, as is said by Mr. Pomeroy in the first volume of his treatise on Equity Jurisprudence, section 251, "the decree of a court of equity, and the relief given by it in one judicial proceeding, could not by any possibility prevail to prevent the multiplicity of suits which is the very object of its interference." That is to say: The issues will still be actually numerous, and will still be essentially separate, although there is a formal pretense that one suit only is being carried on. In section 269 the rule is stated affirmatively in the following language: "The weight of authority is simply overwhelming, that the jurisdiction may and should be exercised, either on behalf of a numerous body of separate claimants against a single party, or on behalf of a single party against such a numerous body, although there is no common title nor community of right or of interest in the subject-matter among those individuals, but where there is, and because there is, merely a community of interest among them
in the questions of law and fact involved in the general con-
139 troversy, or in the kind and form of relief demanded and obtained by or against each individual member of the numerous body." And in section 274, a subdivision of the fourth class of such controversies is thus described: "Suits by a single plaintiff against a numerous body of persons to establish his own right and defeat all their opposing claims, where the claims of these persons are legally separate, arose at different times, and from separate sources, and are common only with respect to their interest in the question involved, and in the kind of relief to be obtained by or against each."

These quotations state the rules that are relied on by the complainant to sustain the present bill; but assuming them to be correct—and I have no disposition to controvert them—I do not think the facts bring the bill within the rules. Each case is to be considered upon its own circumstances, in order to determine whether the equitable jurisdiction exists (Rich *v.* Braxton, 158 U. S., 406); and in my opinion the circumstances of the case now before the court do not disclose a common interest between or among the parties, nor a common relation, nor a common interest in the questions involved, or in the kind of *of* relief to be obtained. The common interest of the stockholders in the question, how large the assessment should be, ceased when the decree of the Minnesota court upon that subject was entered. Thereafter, a different question arose for determination—namely: Can the assessment be lawfully enforced against the individuals charged therewith?—and in this question the interest of each stockholder is separate and distinct. The bill asserts the conclusiveness of the Minnesota decree upon the defendants, so far as the necessity for the assessment and the amount charged against each stockholder are concerned; Hancock Bank *v.* Farnum, 20 S. C. Rep., 506. Assuming that position to be sound—and, if I do not so assume it, if these questions are still open for determination, so

far as the Pennsylvania stockholders are to be affected, the bill must fail for want of necessary parties—it is clear that only two classes of questions remain to be decided. The first is, whether a given stockholder was ever liable as such; and the second is, whether, if he were originally liable, his liability has ceased either in whole or in part. Manifestly, as it seems to me, the defendants have no common interest in these questions, or in the relief sought by the receiver against each defendant. The receiver's cause of action against each defendant is no doubt similar to his cause of action against every other, but this is only half of the matter. The real issue, the actual dispute, can only be known after each defendant has set up his defence; and defences may vary so widely that no two controversies may be exactly, or even nearly, alike. If (as is sure to happen) differing defences are put in by different defendants, the bill evidently becomes a single proceeding only in name. In reality, it is a congeries of suits with little relation to each other, except that there is
140 a common plaintiff, who has similar claims against many persons. But as each of these persons became liable, if at all, by reason of a contract entered into by himself alone, with the making of which his codefendants had nothing whatever to do; so he continues to be liable, if at all, because he himself, and not they, has done nothing to discharge the liability. Suppose A to aver that his signature to the subscription list was a forgery. What connection has that averment with B's contention, that his subscription was made by an agent who had exceeded his powers? Or with C's defence, that his subscription was obtained by fraudulent representations? Or with D's defence, that he has discharged his full liability by a voluntary payment to the receiver himself? Or with E's defence, that he has paid to a creditor of the corporation a larger sum than is now demanded? These are separate and individual defences, having nothing in common; and upon each, the defendant setting it up is entitled to a trial by jury, although it may be somewhat troublesome and expensive to award him his constitutional right.

But, even if the ground of diminished trouble and expense may be sufficient, I should still be much inclined to hesitate before I conceded the superiority of the equitable remedy in the present case. Such a bill as is now before the court is certain to be the beginning of a long and expensive litigation. The hearings are sure to be protracted; several, perhaps many, counsel will no doubt be concerned, whose convenience must be consulted; the testimony will soon grow to be voluminous; the expense of printing will be large; the costs of witnesses will not in any degree be diminished; and if some docket costs may be escaped, this is probably the only pecuniary advantage to be enjoyed by this one cumbersome bill over separate actions at law.

A final word may be added. If I am to follow as an authority a dictum of the Supreme Court of the United States in Kennedy *vs*, Gibson, 8 Wall., 505, the bill might have been dismissed without any discussion of the subject on principle. That was a case in which a receiver was seeking to recover from stockholders of an insolvent national bank the additional liability imposed by the Federal statute

and in the course of the opinion the court, holding that the liability was several and not joint, distinctly declared: "Where the whole amount is sought to be recovered, the proceeding must be at law. Where less is required, the proceeding may be in equity, and in such a case an interlocutory decree may be taken for contribution, and the case may stand over for the further action of the court—if such action should subsequently prove to be necessary—until the full amount of the liability is exhausted." No doubt this was a dictum; but, as the circuit court of appeals of the sixth circuit has recently pointed out in Bailey *vs.* Tillinghast, 99 Fed., 801, it has since been recognized in several cases without qualification, and the court of
141 appeals approved it also, saying: "Beyond doubt the ruling that, where the whole amount of the liability is sought to be recovered, the suit must be at law, was based upon the fact that in such a case the remedy in law is adequate, and under the provision of section 723 Rev. St., the action must be brought there, and then the stockholder would be given the privilege of a trial by jury." Where the whole amount is sued for, there seems to be nothing further for equity to do. No account needs to be taken, no ascertainment of liability is to be had; no adjustment of equities is to be made; nothing is to be done except to enforce a separate individual contract for an undivided sum. For such enforcement the legal remedy is inadequate, even if the standard be applied, that "it is not enough that there is a remedy at law; it mus- be plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration as the remedy in equity" (Rich *vs.* Braxton, 158 U. S., 406); or if the rule be remembered, that "the jurisdiction in equity attaches unless the legal remedy, both in respect to the final relief and the mode of obtaining it, is as efficient as the remedy which equity would confer under the same circumstances;" Kilbourn *vs.* Sunderland, 130 U. S., 514.

I shall not extend this opinion by examining in detail the cases cited by the learned counsel for complainant in their very able brief. Some of these decisions are easily distinguishable from the case at bar, and if others seem perhaps to be at variance with the conclusion I have reached, I am content to have the subject reviewed in the light of the principles to which I have referred. Believing, therefore, that the complainant should sue at law—following in this district the course that he seemed to regard as adequate in the district of Massachusetts; Hale *vs.* Hardon, 95 Fed., 747—I sustain the seventh reason assigned by the demurrer.

Endorsed: 26. Oct. sess., 1898. U. S. C. C. Hale, receiver, *vs.* Allison, *et al.* Opinion surdemurrer. Filed June 11, 1900. Samuel Bell, clerk, H. B. R.

In the United States Circuit Court for the Eastern District of Pennsylvania.

HALE, Receiver, *vs.* ALLISON ET AL. } No. 26. October Sessions, 1898.

142 And now, to wit, July 25, 1900, it is ordered, adjudged and decreed that the demurrer be sustained and the bill dismissed with costs, without prejudice. J. B. McP., *J.*

Endorsed: 26. Oct. sess., 1898. U. S. C. C. E. D. of Pa. Hale, receiver, *vs.* Allison, *et al.* Decree. Filed July 26, 1900, Samuel Bell, clerk.

In the United States Circuit Court for the Eastern District of Pennsylvania. In Equity.

W. E. HALE, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Complainants,

vs.

EDWARD P. ALLISON, GERTRUDE ALLISON, Willis R. Armstrong, William Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emeline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Schaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurances on Lives and Granting Annuities (a Corporation), Trustee for Mary A. Gazzam, and The Philadelphia Trust, Safe Deposit and Insurance Company (a Corporation), Trustee for Mary A. Gazzam, Defendants. } No. 26. October Sessions, 1898.

143 The above-named complainant conceiving himself aggrieved by the decree heretofore made and entered in the

above-entitled cause on the 26th day of July, 1900, does hereby appeal from said order and decree to the United States circuit court of appeals for the third circuit for the reasons specified in the assignments of errors which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the United States circuit court of appeals for the third circuit.

W. E. HALE,
M. H. BOUTELLE,
CHAS. C. LISTER,
Solicitors for Complainant.

Dated July 26, 1900.

The foregoing petition on appeal is granted and the claim of appeal therein made is allowed.

BY THE COURT.

Dated July 26, 1900.

Endorsed: 26. Oct. —, 1898. Hale *vs.* Allinson *et al.* Petition and order allowing appeal. Filed July 26, 1900, Samuel Bell, clerk.

In the United States Circuit Court for the Eastern District of Pennsylvania. In Equity.

W. E. HALE, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Complainants,

vs.

EDWARD P. ALLISON, GERTRUDE ALLISON, Willis R. Armstrong, William Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emeline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Schaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurances on Lives and Granting Annuities (a Corporation), Trustee for Mary A. Gazzam, and The Philadelphia Trust, Safe Deposit and Insurance Company (a Corporation), Trustee for Mary A. Gazzam, Defendants.

144

No. 26.
October Sessions, 1898.

Assignment and Specification of Error.

I.

The court erred in sustaining the demurrers to complainant's bill and hereunder complainant makes the following specifications:

First. In holding that complainant's bill was defective on the sixth ground in said demurrers stated, viz:

"The bill as filed, does not state anything warranting relief in equity. If the decree made in the Minnesota court was of no legal validity, no proceedings thereupon will lie. If it was of legal validity, there is an ample remedy at common law for any rights thereunder which may exist in the receiver or in any other person."

Second. In holding complainant's bill defective on the seventh ground in said demurrers stated, viz:

"If the decree entered in Minnesota has legal validity, the remedy is solely by an action at common law against each stockholder and not against all the stockholders or against some of them jointly."

II.

The decree of the circuit court dismissing complainant's bill was erroneous in that,

First. It denied to complainant the relief to which, under the allegations of his bill, he was entitled.

Second. It held that complainant had an adequate remedy at law.

Third. It held that a court of equity, on the facts stated by the bill, was without jurisdiction.

Fourth. In that it denied that a court of equity had
145 jurisdiction on the ground that the right asserted and shown by the allegations of said bill was an equitable right.

Fifth. In that it denied that a court of equity had jurisdiction under the allegations of the bill on the ground of preventing multiplicity of suits.

Sixth. In that it denied that a court of equity had, under the allegations of the bill, jurisdiction on the ground that this was an ancillary proceeding and brought in aid of and to enforce an equitable decree of another court.

III.

The decree of the circuit court was erroneous in that,

First. In that it sustained the sixth and seventh grounds assigned by the demurrers.

Second. In that it failed and refused to overrule all the several grounds of demurrers assigned.

Third. In that it sustained the demurrers.

Fourth. In that it dismissed complainant's bill.

Fifth. In that it failed to hold that on the allegations of the bill complainant was entitled to the relief prayed.

IV.

The court erred in that it failed,

First. To overrule the first ground of demurrer.

Second. To overrule the second ground of demurrer.

Thi-d. To overrule the third ground of demurrer.

Fourth. To overrule the fourth ground of demurrer.

Fifth. To overrule the fifth ground of demurrer.

Sixth. To overrule the eighth ground of demurrer.

Seventh. To overrule the ninth ground of demurrer.

Eighth. To overrule the tenth ground of demurrer.

Ninth. To overrule the eleventh ground of demurrer.

Tenth. To overrule the twelfth ground of demurrer.

Eleventh. To overrule the thirteenth ground of demurrer.

Wherefore, complainant prays that the decree be reversed.

M. H. BOUTELLE,
W. E. HALE,
CHAS. C. LISTER,
Solicitors for Complainant.

Endorsed: 26. Oct.—, 1898. Hale *vs.* Allinson, *et al.* Assignment of errors. Filed July 26, 1900, Samuel Bell, clerk.

146 The United States Circuit Court of Appeals for the Third Circuit.

W. E. HALE, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Complainant and Appellant,

vs.

EDWARD P. ALLISON, GERTRUDE ALLISON, WILLIS R. ARMSTRONG, William Burnham, George Burnhan, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emeline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Schaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurances on Lives and Granting Annuities (a Corporation), Trustee for Mary A. Gazzam, and The Philadelphia Trust, Safe Deposit and Insurance Company (a Corporation), Trustee for Mary A. Gazzam, Defendants and Appellees.

Know all men by these presents, that we, W. E. Hale, as receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company as principal and the Fidelity and Deposit Company of Maryland, a corporation, as surety are held and firmly bound unto the above-named defendants and appellees in the full and just sum of five hundred (500.00) dollars, to be paid to said defendants and appellees, their attorneys, executors, administrators or assigns; for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 18th day of July, in the year of our Lord one thousand nine hundred.

147 Whereas, lately at a circuit court of the United States for the eastern district of Pennsylvania, in a suit pending in said court between the said above-named W. F. Hale, as receiver, complainant, and the above-named Edward P. Allison, *et al.*, defendants a decree was rendered against the said complainant, and the said

complainant having obtained an appeal from said decree to the circuit court of appeals in and for the third circuit, and filed a copy thereof in the office of the clerk of the said circuit court to reverse the decree in the aforesaid suit, and a citation directed to the above-named defendants and appellees citing and admonishing them to be and appear at a session of the United States circuit court of appeals for the third circuit, to be holden at the city of Philadelphia, in said circuit, within thirty (30) days from the 26th day of July, 1900.

Now, therefore, the condition of the above obligation is such that if the said W. E. Hale, as receiver, complainant and appellant as aforesaid, shall prosecute said appeal to effect and answer all damages and costs if he fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

WILLIAM E. HALE,
As Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company.
FIDELITY & DEPOSIT CO.,
OF MARYLAND.
EDWIN H. BARBER,
Local Director.

Attest:
HERMAN HOOPES,
General Agent. [SEAL OF CO.]

Signed, sealed and delivered in the presence of
H. A. CHAFFEE.
WM. B. HENDERSON,
As to W. E. Hale as Receiver.
F. TOWNSEND,
As to the Fidelity and Deposit Company of Maryland.

The foregoing bond is hereby approved.

BY THE COURT.

Approved:
WALTER C. RODMAN,
Of Counsel for Defendant.

148 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Be it remembered, that on this 17th day of July, 1900, personally appeared before me the undersigned, a notary public, within and for Hennepin county, Minnesota, W. E. Hale, to me known to be the person who executed the foregoing bond as receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company, and acknowledged the execution of said bond as his free act and deed as such receiver for the uses and purposes therein expressed.

WILLIAM B. HENDERSON,
[SEAL.] *Notary Public, Hennepin Co., Minnesota.*

Endorsed: 26. October —, 1898. Hale *vs.* Allinson, *et al.* Bond surappeal. Filed July 26th, 1900. Samuel Bell, clerk.

The United States Circuit Court for the Eastern District of Pennsylvania.

W. E. HALE, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Complainant,

vs.

EDWARD P. ALLISON, GERTRUDE ALLISON, WILLIS R. ARMSTRONG, William Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emeline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Schaefer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus
149 Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurances on Lives and Granting Annuities (a Corporation), Trustee for Mary A. Gazzam, and The Philadelphia Trust, Safe Deposit and Insurance Company (a Corporation), Trustee for Mary A. Gazzam, Defendants.

UNITED STATES OF AMERICA, *Third Judicial District*, } *ss:*

To the above-named defendants, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the third circuit, to be holden at the city of Philadelphia, in said circuit, within thirty (30) days, pursuant to an appeal filed in the office of the clerk of the circuit court of the United States for the eastern district of Pennsylvania, wherein the above-named W. E. Hale, as receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company is appellant and you are appellees, and that you then and there show cause, if any there be, why the order and decree heretofore made and entered in the above-entitled cause on the 26th day of July, 1900, and against said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 26th day of July, 1900.

Dated July 26, 1900.

JOHN B. McPHERSON,
United States District Judge,
Presiding in the Circuit Court.

H. B. R.

Attest:
HENRY B. ROBB,
Deputy Clerk.

I accept service of the above.

JOHN G. JOHNSON,
Per J. W. BAYARD,
For Defendants.

July 27, 1900.

Endorsed: U. S. *S.* C., E. D. of Pa. Hale *vs.* Allison *et al.* Citation. Filed July 27, 1900. Samuel Bell, clerk.

150 UNITED STATES OF AMERICA, } *sct:*
Eastern District of Pennsylvania, }

I, Samuel Bell, clerk of the circuit court of the United States of America, for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true, complete and faithful copy of the original pleas and proceedings in the case of Arthur R. Rogers, *et al. vs.* E. P. Allinson, *et al.*, No. 26, October session, 1898, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 31st day of July, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty fifth.

SAMUEL BELL,
Clerk C. C.,
Per BRODBECK.

151 In the United States Circuit Court of Appeals for the Third Circuit, September Term, 1900.

No. 19.

And afterwards, to wit, on the third day of October, A. D. 1900, this cause being called for argument on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania, before Hon. George M. Dallas and Hon George Gray, circuit judges, and Hon. Edward G. Bradford, district judge, and being argued by counsel for the respective parties, and the court not being fully advised in the premises, takes further time for consideration thereof.

And afterwards, to wit, on the fourth day of January, A. D. 1901, comes the parties aforesaid by their counsel aforesaid, and the court now being fully advised in the premises renders the following opinion, to wit:

In the United States Circuit Court of Appeals for the Third Circuit.

ARTHUR R. ROGERS and W. E. HALE, Receivers for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Appellants,
vs.
EDWARD P. ALLINSON, Appellee.

Before Dallas and Gray, circuit judges, and Bradford, district judge.

DALLAS, *J.:*

This suit was begun by a bill in equity filed by two persons, one a creditor and the other the receiver of the Northwestern Guaranty Loan Company; but leave having been asked and granted to dismiss the creditor from the suit, it was treated below, and has been considered here, as if it had been brought in the first instance by the receiver alone. He asserted the right to sue as receiver by virtue of his appointment to that office under the laws of Minnesota, by a court of that State, in a proceeding which had been instituted against the Northwestern Guaranty Loan Company and certain of its stockholders at the instance of certain of its creditors. The bill
152 alleged that under the constitution and laws of Minnesota, the stockholders were severally liable to an amount not exceeding the par value of their respective shares, for any deficiency in the assets of the corporation to meet its indebtedness; that in the proceeding before mentioned, the existence of such a deficiency was ascertained, and was found to be so great as to require every stockholder to contribute to the full amount of his said liability; that the Minnesota court had, in the same proceeding, decreed that the stockholders should pay accordingly, and had directed the complainant as receiver to collect the sums so ordered to be paid; and that the defendants were respectively holders of shares as in the bill particularly stated. Thereupon it was asked that they should "be adjudged liable to pay and contribute to the extent of the par value of their several holdings of stock, for the equal benefit of the creditors of the said corporation." Several demurrers were interposed, but it is not necessary to refer to them separately or in detail. The points urged in their support are, in substance, (1) that the complainant's appointment as receiver by the Minnesota court did not entitle him to sue as such in the circuit court of the United States for the eastern district of Pennsylvania; (2) that the defendants below were not bound by the proceeding in Minnesota; (3) that, irrespective of any other question, a suit in equity was not maintainable, because there was an adequate remedy by separate action at law against each of the stockholders who were joined as defendants in the bill.

We strongly incline to the opinion that the two points first stated

might well have been sustained. This receiver is but the creature of the court which appointed him, and no legal title is vested in him. Therefore, his asserted right to sue in another jurisdiction cannot be conceded, unless the law as declared in Booth *vs.* Clark (17 How., 322) has been changed in this respect by the decision in Relfe *vs.* Rundle (103 U. S., 322), and we are not prepared to say that it has been. Hale *vs.* Hardon, 87 Fed. Rep., 283. None of the defendants was a party to the proceeding in the Minnesota court, and while we do not now decide the matter, because it is unnecessary to do so, it is not to be inferred that we assent to the proposition that because the stockholders of a corporation are so far privy in interest as to be bound by a judgment against it, they are also bound by a decree that they, individually, shall wholly or partially pay its indebtedness, although they have never had a day in court to controvert the existence of the facts upon which their obligation to do so is dependent. Hawkins *vs.* Glenn, 131 U. S., 319; Hancock Nat. Bank *vs.* Farnum, 176 U. S., 640; and see the dissenting opinion of Colt, J., in Hale *vs.* Hardon, 95 Fed. Rep., 777.

153 But the court below dismissed the bill solely upon the ground that the complainant had an adequate remedy at law, and the learned judge dealt with that subject so fully and satisfactorily as to render any further discussion of it superfluous. We adopt his opinion as our own, and, for the reasons it presents, the decree is affirmed.

Filed January 4th, 1901.

In the United States Circuit Court of Appeals for the Third Circuit, September Term, 1900.

ARTHUR R. ROGERS and W. E. HALE, Receivers for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Appellants,

vs.

EDWARD P. ALLINSON, Appellee.

No. 19.

Appeal from the circuit court of the United States for the eastern district of Pennsylvania.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause, be, and the same is hereby affirmed with costs.

GEORGE M. DALLAS,
Circuit Judge.

Philadelphia, January 8th, 1901.

154 United States Circuit Court of Appeals for the Third Circuit, September Term, 1900.

W. E. HALE, Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Appellant,
vs.
EDWARD P. ALLINSON, Appellee. } No. 19.

Appeal from the circuit court of the United States for the eastern district of Pennsylvania.

And now, to wit, this eighth day of February, A. D., 1901, it is ordered that mandate issue to the said circuit court of the United States for the eastern district of Pennsylvania, in accordance with the opinion and decree of this court in said cause.

GEORGE M. DALLAS,
Circuit Judge.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, Greeting:

Whereas, lately in the circuit court of the United States for the eastern district of Pennsylvania, before you, or some of you, in a cause between W. E. Hale, receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company, appellant, and Edward P. Allison, Gertrude Allison, Willis R. Armstrong, William Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emeline T. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi,
J. Bertram Lippincott, Edwin F. Morse, George A. Morse,
155 Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Shaeffer, Charles M. Swain, Charles J. Shoemaker, Melanie M. Stussy, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurance on Lives and Granting Annuities (a corporation), trustee for Mary A. Gazzam, and The Philadelphia Trust Safe Deposit and Insurance Company (a corporation), trustee for Mary A. Gazzam, appellees, wherein the decree of the said circuit court entered in said cause is in the following words, viz:

"And now, to wit, July 25th, 1900, it is ordered, adjudged and decreed that the demurrer be sustained and the bill dismissed with costs without prejudice."

As by the inspection of the transcript of the record of the said circuit court which was brought into the United States circuit court of appeals for the third circuit by virtue of an appeal agreeably to

the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of September, in the year of our Lord one thousand nine hundred, the said cause came on to be heard before the said United States circuit court of appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs, and that the said respondents, Edward P. Allison, Gertrude Allison, Willis R. Armstrong, Wm. Burnham, George Burnham, Jr., Isabel H. Charlton, Silas Carey, Ellis Clark, John H. Converse, George W. Cornell, James M. Crowell, S. W. Dana, Joseph M. Gazzam, Henry D. Gregory, J. McGregor Gibb, Emiline F. Godfrey, Edward H. Gourley, Emma E. Haman, William Hacker, Henry Haines, Samuel A. Hendrickson, Ernst Hitz, Rudolph Koradi, J. Bertram Lippincott, Edwin F. Morse, George A. Morse, Charles P. Perot, Mary K. Perot, Walter C. Rodman, A. J. Richardson, Abigail Rodman, J. Bunford Samuel, Walter R. Shaefer, Charles M. Swain, Charles J. Shoemaker, Melabie M. Stussey, Richard Tull, Samuel W. Wray, Charles W. West, Edward G. West, Albert B. Weimer, Charles F. Wignall, Alpheus Wilt, Mary Wilt, Florence Wilson, Pennsylvania Company for Insurance on Lives and Granting Annuities (a corporation), trustee for Mary A. Gazzam, and The Philadelphia Trust Safe Deposit and Insurance Company (a corporation), trustee for Mary A. Gazzam, recover against the
156 said complainant, W. E. Hale, as receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company, twenty dollars for their costs herein expended and have execution therefor.

Philadelphia, January 8th, 1901.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the eighth day of February, in the year of our Lord one thousand nine hundred and one.

Costs of appellee—attorney, $20.00.

WM. H. MERRICK,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

UNITED STATES OF AMERICA, ss:

I, William H. Merrick, clerk of the United States circuit court of appeals for the third circuit, do hereby certify the foregoing pages from one to one hundred and sixty inclusive to contain a full, complete and faithful copy of the original transcript of record in the case of Arthur R. Rogers and W. E. Hale, receivers for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company, appellants, and Edward P. Allinson, ap-

pellee, on file, and now remaining among the records of the said court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twelfth day of March in the year of our Lord one thousand nine hundred and one and of the Independence of the United States the one hundred and twenty-fifth.

[Seal United States Circuit Court of Appeals, Third Circuit.]

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

157 [Endorsed:] File No. 18,106 U. S. circuit court of appeals, third circuit. Term No. 290. William E. Hale, as receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company (a corporation), petitioner, *vs.* Edward P. Allinson *et al.* Filed April 5, 1901.

158 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the third circuit, Greeting:

Being informed that there is now pending before you a suit in which W. E. Hale, as receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company, is appellant, and Edward P. Allinson *et al.*, are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the eastern district of Pennsylvania, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals
159 and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of May, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

160 [Endorsed:] File No. 18,106. Supreme Court of the United States. No. 621, October term, 1900. William E. Hale, as receiver, &c., *vs.* Edward P. Allinson *et al.* Writ of certiorari.

161 U. S. C. C. of Appeals, Third Circuit, September Term, 1900.

W. E. HALE, Receiver,
vs.
EDWARD P. ALLINSON, ESQ. } No. 19.

Supreme Court of the U. S., October Term, 1900.

W. E. HALE, Receiver,
vs.
EDWARD P. ALLINSON ET AL. } No. 621.

It is hereby stipulated by the respective counsel in the above case that the certified copy of the transcript of record on file in the Supreme Court of the United States, shall be taken as a return to the writ of certiorari granted on May fifteenth, A. D. 1901 by the Supreme Court of the United States in the case of W. E. Hale, receiver *vs.* Edward P. Allinson *et al.*, United States circuit court of appeals for the third circuit, September term 1900, No. 19.

CHAS. C. LISTER,
M. H. BOUTELLE,
Att'ys for Pl'ff.
JOHN G. JOHNSON,
Att'y for Defs.

5, 28, '01.

162 [Endorsed:] 19, Sep. T., 1900. U. S. C. C. appeals, third circuit. Hale, receiver, *et al. vs.* Allinson *et al.* Stipulation.

163 UNITED STATES OF AMERICA, *sct:*

I, William H. Merrick, clerk of the United States circuit court of appeals, for the third circuit, by virtue of the foregoing writ of certiorari and in obedience thereto do hereby certify to the Supreme Court of the United States the consent of counsel for the respective parties thereto annexed as my return to the said writ.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 29th day of May, in the year of our Lord one thousand nine hundred and one and of the Independence of the United States the one hundred and twenty-fifth.

Seal United States Circuit Court of Appeals, Third Circuit.

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

164 [Endorsed:] File No. 18,106 Supreme Court U. S., October term, 1900. Term No. 290. Wm. E. Hale, as rec'r, &c., petitioner, *vs.* Edward P. Allinson *et al.* Writ of certiorari and return. Filed May 31, 1901.

In The Supreme Court of the United States.

OCTOBER TERM, 1900.

Ex parte WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION).

MOTION FOR WRIT OF *CERTIORARI*.

And now comes William E. Hale, as Receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company, by M. H. Boutelle and Charles C. Lister, his counsel, and moves this Honorable Court that it shall by *certiorari*, or other proper process, directed to the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, require said Court to certify to this Court, for its review and determination, a certain cause in said Court of Appeals lately pending, wherein the said William E. Hale, as Receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company (a corporation), was appellant and Edward P. Allison, et al., were appellees, and to that end now tenders herewith his petition, together with a certified copy of the entire record in said cause in said Circuit Court of Appeals. M. H. Boutelle.

Counsel for William E. Hale, as Receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company (a corporation).

Ex parte WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION).

Petitioner.

IN THE MATTER OF THE PETITION FOR WRIT OF *CERTIORARI* REQUIRING THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT TO CERTIFY TO THE SUPREME COURT FOR ITS REVIEW THE CASE OF

W. E. HALE, Receiver.

Appellant,

vs.

EDWARD P. ALLISON, *et als.*

Appellees.

To the Honorable The Supreme Court of the United States:

The petition of W. E. Hale, as receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company (a corporation), respectfully shows to this Honorable Court as follows:

That the Northwestern Guaranty Loan Company was, at all times hereinafter mentioned, a corporation organized under the general laws of the State of Minnesota.

That the laws of that state, and more particularly the Constitutional provisions thereof, impose personal liability upon the stockholders of all corporations of the class of said Northwestern Guaranty Loan Company, for the corporate debts, in an amount not exceeding the amount of the par value of the stock held by each.

That the liability thus created as interpreted by the decisions of the highest courts of that state is contractual, runs to all and several the corporate creditors in common, and

982

contemplates the creation of a fund for the equal benefit of all such creditors.

That the remedial laws of said state, as interpreted by the highest court thereof, contemplate primary jurisdiction for the purpose of enforcing this stock liability in the courts of corporate domicile, and for that purpose provide for the institution therein of an equitable action by corporate creditors for obtaining an account of the debts and assets of the corporation, determining the deficiency, if any, of the latter, and apportioning such deficiency amongst all stockholders in common, according to their respective holdings of stock, and not exceeding in any event the maximum liability provided by law.

That by said remedial laws provision is further made in analogy to the rules and practice of courts of equity for giving notice of the pendency of such case to all creditors and limiting the time within which such creditors shall intervene therein or be barred from participation in the recovery and fund thereby contemplated.

That further provision is made by said laws authorizing and empowering the court to appoint a receiver or receivers for the purpose of effectuating and carrying out the purposes thereof.

As further interpreted by the courts of that state the provisions incorporated in the laws aforesaid, both those imposing the liability and those prescribing the conditions whereon it may be made available, are impliedly incorporated in the contract consummated by the stockholders in the act of subscribing or taking stock and mutually binding upon stockholder and creditor alike. In consequence whereof it is held that the creditor may avail himself of the liability in no other manner than in a proceeding calculated to preserve and protect the rights of all creditors in common and may not proceed in his own individual behalf.

And it is further held in consequence of the same contractual theory that the ascertainments contemplated to be made by the court in the original proceeding by the creditors, upon which the liability may be made available, viz.: the debts, assets, the deficiency of the latter and the amount in which all stockholders in common shall be assessed to make good such deficiency, are final and conclusive on all corporate stockholders whether parties to the original proceeding and served with process therein or not.

Your petitioner further avers that in 1893, in proper proceedings had to that end in the courts of the State of Minnesota, and in accordance with the laws of that state, the Northwestern Guaranty Loan Company was adjudged insolvent and a receiver appointed for the purpose of winding up its affairs.

That thereafter, and in conformity to the local laws of that state, hereinbefore mentioned, a suit was duly instituted by and on behalf of the several creditors of that corporation, against the corporation, its general receiver, and all and several the stockholders thereof.

That pursuant to the order of the Court therein some six or seven hundred creditors from many and diverse states holding claims and demands against the corporation aggregating upwards of three million dollars duly intervened therein.

That process issued against the corporation, its general receiver in insolvency, and all and several the stockholders residing within the State of Minnesota.

That thereafter such proceedings were had in conformity to the laws of that state in the cause last aforesaid, that a decree was entered therein adjudging and decreeing, amongst others, that the maximum liability provided by the law of that state, as hereinbefore stated, be enforced against all corporate stockholders in common, and that to that end your petitioner

was duly appointed and qualified as receiver and was duly authorized and empowered to take such steps as might be necessary in the premises for the purpose of enforcing and collecting such ascertained liabiiity.

That the indebtedness ascertained by said decree as due and owing to the creditors intervening therein was upwards of three million dollars, as aforesaid, for which judgment was duly rendered against the said corporation.

That the assets and securities in anywise available for the payment of said indebtedness, as ascertained by said decree, was four hundred and fifty thousand dollars, and the deficiency upwards of two million five hundred thousand dollars.

That the total par value of outstanding stock (and therefore the maximum measure of stock liability) was one million two hundred and fifty thousand dollars, or less than one-half the ascertained deficiency.

Your petitioner further avers that said stock was, at all the times herein referred to, held by some five hundred different parties and corporations of whom approximately five-sixths in amount and upwards of four hundred in number resided, during all the times herein mentioned, without the State of Minnesota.

That the residences of such stockholders embrace many and diverse jurisdictions, including herein the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, and other states not here necessary to mention.

That subsequent to the proceedings had and taken, as hereinbefore stated, in the said courts of Minnesota, and the rendition and entry of the decree in that cause, as hereinbefore stated, various actions and proceedings were instituted in several of the aforesaid jurisdictions outside the State of Minnesota for the purpose of enforcing the aforesaid stockholders' liability.

That amongst said several proceedings, so instituted as aforesaid, an original bill in equity was filed in the United States Circuit Court in and for the Eastern District of Pennsylvania, by a judgment creditor of the said Northwestern Guaranty Loan Company, in behalf of itself and all other creditors who should join or participate therein, and against all and several the stockholders of that corporation residing in and citizens of the commonwealth of Pennsylvania.

That thereafter such proceedings were had in said cause that a demurrer was interposed therein, by and on behalf of the several defendants, and a decree entered in said Circuit Court dismissing complainant's bill, from which an appeal was thereafter perfected to the Court of Appeals of the Third Circuit. That upon said appeal the last named Court of Appeals held, substantially, that no jurisdiction existed in a court outside of the State of Minnesota to enforce in an original proceeding the liability imposed on corporate stockholders by the Minnesota laws; that those laws contemplated investing the courts of the domicile with primary jurisdiction in the premises, and that the proceedings to determine the necessity for and amount in which the liability should be enforced should be had in such domiciliary courts, and thereafter as against nonresident stockholders relief might be obtained in an auxiliary proceeding in equity against stockholders in foreign jurisdictions.

(Elkhart Natl. Bank vs. Northwestern Guaranty Loan Co., 87 Fed. Rep. 252.)

That the holding of the said Court of Appeals of the Third Circuit, in so far as it adjudicated and determined that an original bill would not lie in a foreign jurisdiction for the purpose of enforcing liabilities of the class in question, is in substantial accord with the similar conclusions of the Court of Appeals of the First Circuit in National Bank vs. Sayward, 91 Fed. Rep. 443.

That in accordance with the holding of the Court of Appeals of the Third Circuit above, determining, as aforesaid, that a remedy might be had by auxiliary proceeding in equity after a decree of the domiciliary court determining the necessity for and amount in which all stockholders should be held to contribute, to enforce that decree, your petitioner caused to be filed in the Circuit Court for the Eastern District of Pennsylvania such an auxiliary bill against the several stockholders, residents and citizens of that jurisdiction.

That thereafter such proceedings were had that the several defendants in said bill interposed common demurrers, challenging, (1) the jurisdiction of a court of equity, (2) the right of your petitioner to sue, (3) the effect of the Minnesota decree, and (4) the right to relief on the merits, all as will more fully appear from the certified copy of the record herewith produced and accompanying this application. That upon the hearing of said demurrers it was held and determined by the Circuit Court that no jurisdiction in equity existed, no reference being made in the decision to the conclusions and the previous holding of the Court of Appeals of that circuit in the case of Elkhart National Bank vs. Northwestern Guaranty Loan Company, *supra*, growing out of the insolvency of the same corporation, involving the same liability and the same foreign laws.

That upon the aforesaid determination of the Circuit Court, a decree was entered in said cause dismissing your petitioner's bill without prejudice, and therefrom an appeal was duly taken to the Court of Appeals of the Third Circuit, as will more fully appear from the record herein.

That upon said record the cause came on for hearing before the Court of Appeals of the Third Circuit and resulted in an affirmance of the decree of the Circuit Court for want of jurisdiction in an equitable proceeding and practically de-

ciding that the several demurrers as presented might have been sustained upon the merits without regard to the jurisdictional feature.

From the decision of the Court of Appeals last referred to, your petitioner presents this application for *certiorari* directed to the Court of Appeals of the Third Circuit.

The grounds of this application are as follows:

First. The importance of the general questions involved herein, and

Second. The hopeless and irreconcilable confusion evidenced by the decisions in the various circuits, between the Circuit Courts of Appeals, as well as the Circuit Courts and Circuit Courts of Appeals of different circuits.

Your petitioner further shows and states to the court that suits or actions are now pending in all the several jurisdictions hereinbefore referred to, involving the questions here sought to be reviewed and growing out of the insolvency of this same corporation.

Your petitioner further shows that in a certain action heretofore instituted at law, by your petitioner, as receiver as aforesaid, in the Circuit Court for the District of Massachusetts to enforce the liability in question, the decision of the court practically denied a right or remedy to enforce the liability in any form of action whatsoever. (Hale vs. Hardon, 89 Fed. Rep. 283.)

That on writ of error to the Circuit Court of Appeals of the First Circuit, that decision was reversed by a divided court and the right held enforceable and the remedy held properly conceived.

(Hale vs. Hardon, 95 Fed. Rep. 747.)

That thereafter, and subsequent to the last decision of the Court of Appeals of the First Circuit, in a case involving similar laws and presenting similar questions arising in the

Circuit Court for the Eastern District Pennsylvania wherein the opinion was delivered by Mr. Circuit Judge Dallas (by whom the opinion in the Court of Appeals in this case was written), the Circuit Court of Pennsylvania expressly declined to follow the Circuit Court of Appeals of the First Circuit and denied the right to enforce the liability. (Wigton vs. Bosler, 102 Fed. Rep. 70.)

Your petitioner further shows that the decision of the Court of Appeals in the case here sought to be reviewed practically follows Wigton vs. Bosler and is diametrically opposed in this regard to the decision of the Court of Appeals of the First Circuit in Hale vs. Hardon, *supra*.

Your petitioner further avers that said cause, as presented by the bill and demurrers to the Circuit Court and Circuit Court of Appeals herein, covered and embraced, as will more fully appear from the accompanying record, on the merits, the following propositions, viz.:

1st. The right of your petitioner, as receiver, to sue in a jurisdiction outside of that by which he was appointed.

2nd. The effect, as conclusive or otherwise, of the proceedings had in the courts of corporate domicile on non-resident stockholders.

3rd. The right to enforce a liability of this class in any method or form of procedure in a jurisdiction outside of that by which the corporation was created.

And your petitioner further avers that each and all of said several questions are involved in various litigations now pending in the Federal Courts of the various jurisdictions hereinbefore indicated, as well as in the cause at bar.

Your petitioner further avers that in each of said causes, as well as that here pending, the first question above, viz.: the right of the receiver to sue, has presented and given rise to conflict of opinion, based upon the proper interpretation of

previous decisions of this court, notably Booth vs. Clark, 17 How. 323, and Relfe vs. Rundell, 103 U. S. 322, as indicated by the opinion of the Court of Appeals in the cause here sought to be reviewed, as well as the Court of Appeals of the First Circuit in the case therein decided and hereinbefore referred to.

That upon the second and third questions above, viz.: the effect of the proceedings of the Minnesota Court, the case in principle is, as your petitioner believes, covered by the decisions and precedents of this Honorable Court, but in the absence of direct precedent impracticable distinctions are suggested rendering the principles enunciated by this court inapplicable.

Your petitioner further avers that jurisdiction in equity in the case at bar was clearly sustainable on each and all the following grounds, viz.:

1st. That the right asserted and sought to be enforced as determined and interpreted by the local law of the state by which the same was so created was equitable in character.

2nd. That the proceeding had for its end and object the enforcement of an equitable decree, and that within the principles announced by this Honorable Court, in the case of Hancock National Bank vs. Farnum, 176 U. S. 640, the decree rendered in the local courts of Minnesota, while not equivalent to a personal judgment against stockholders not served with process or appearing in that cause, was a *quasi* decree against all corporate stockholders, in so far as it determined the necessity for and amount in which all stockholders should be held to contribute, and was therefore a decree which a court of equity possessed jurisdiction to enforce.

3rd. That sufficient ground for the interposition of equity was shown in the common origin of the claims and the similarity of the questions of law and fact involved therein, thus

bringing the case clearly within that branch of equitable jurisdiction having for its end and object the prevention of a multiplicity of suits.

Your petitioner further avers that error was assigned, as more fully appears from the record accompanying this petition, in the Court of Appeals, to the denial of jurisdiction in equity upon each of the grounds aforesaid, and to the refusal of the court to sustain the bill on the merits.

That jurisdiction on the first two grounds was clearly held in the previous decision of the same Court of Appeals in Elkhart National Bank vs. Northwestern Guaranty Loan Company, *supra*, in conformity to the direction whereof the present suit was instituted in that circuit.

That upon the third ground, without regard to numerous precedents which might be cited, the case was fully covered by the decision of the Court of Appeals of the Sixth Circuit in Bailey vs. Tillinghast, 99 Fed. Rep. 801, to which the decision in the cause under consideration is diametrically opposed on the question of jurisdiction.

Your petitioner further avers that this cause, as presented to the Court of Appeals of the Third Circuit, involving the right of a receiver appointed by a court of a foreign jurisdiction to join, in one proceeding, demands against a number of stockholders having the same origin and presenting similar questions of law and fact, is substantially parallel with the question certified by the Court of Appeals of the Second Circuit to this Honorable Court, but not found necessary to be answered, in the case of McDonald vs. Williams, reported in 174 U. S. 397.

Your petitioner further avers that all and several the questions herein suggested may be appropriately passed upon and finally decided by this court on review of the decision of the Court of Appeals of the Third Circuit herein. And

that by such decision an immense amount of litigation now pending and undetermined in various of the Circuit Courts of the United States growing out of the same insolvency as that here involved, and presenting the same questions of law and fact, will be relieved of the conflict and embarrassment arising out of the diversity of opinion announced by the various courts in these causes, as hereinbefore stated. That unless said questions be so finally passed upon and determined, the enforcement of the rights of the creditors of this insolvent corporation is confronted by a multitude of litigation, in and of itself practically prohibitive, by reason of the inability of the various courts to determine and agree on the basic principles involved.

Your petitioner further shows and states to the Court, that jurisdiction in the said cause here under consideration was invoked on the ground of diversity of citizenship, and that the decision of the Court of Appeals under the Act of Congress creating that Court, approved March 3, 1891, is final.

WHEREFORE, Your petitioner respectfully prays that a Writ of *Certiorari* may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding said Court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in the said cause therein entitled W. E. Hale, as Receiver, Appellant, vs. Edward P. Allison, et al., Appellees, to the end that the said case may be reviewed and determined by this Court, as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate. And in conformity with Section 6 of the Act of Congress, entitled "An act to establish

9830

Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891, and that said decision and judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Couft.

And your petitioner will forever pray, etc.

W. E. HALE,

Receiver for the collection and enforcement of the liability of stockholders.

By M. H. Boutelle

Attorney and Counsel for Petitioner.

STATE OF MINNESOTA,

ss.

COUNTY OF HENNEPIN,

M. H. BOUTELLE, being duly sworn, says that he is one of the attorneys and of counsel for William E. Hale, as Receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company (a corporation), the petitioner above named, and as such had personal charge for him of the case in the foregoing petition mentioned in the Circuit Court of the United States for the Eastern District of Pennsylvania and in the United States Circuit Court of Appeals for the Third Circuit; that he has read the said petition by him subscribed; and that the facts therein stated are true to the best of his information and belief.

M. H. Boutelle

Sworn to and subscribed before me this 21st day of February, 1901.

Nathan H. Chase

Notary Public, Hennepin, County, Minnesota.

In The Supreme Court of the United States.

OCTOBER TERM, 1900.

Ex parte WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION).

Petitioner.

STATEMENT AND BRIEF OF PETITIONER.

The present application for a writ of *certiorari* to the Court of Appeals for the Third Circuit has seemed to counsel to present the only feasible method of conclusively settling and ascertaining certain questions common to litigation pending in the Federal Courts of a comparatively large number of different jurisdictions.

The Statement of Facts in the accompanying petition explanatory of the status of this litigation, together with the marked diversity of opinion which has characterized the decisions of the various Circuit Courts and Courts of Appeals, has been attempted to be made sufficiently full in matter of detail to justify the present application without resorting to any extended brief in support thereof.

For upwards of four years these causes have been in constant litigation in all the several jurisdictions referred to in the accompanying petition, and after repeated hearings, both before Circuit Courts and Circuit Courts of Appeals, the fundamental principles and questions involved are still far from final and conclusive adjudication.

Diversity and disagreement between different courts and judges over the general questions common to this litigation as a whole, has encouraged successive and repeated contests, until the prospect of ultimate enforcement of the rights of creditors of this insolvent corporation appears possible only by frittering away the benefits to be derived therefrom in endless controversy in the courts.

With these general questions disposed of, further controversy is reduced to a minimum.

In the present aspect of these causes sooner or later this Court must inevitably interpose and dispose, once for all, of the irreconcilable differences between the judges of the different circuits.

So strongly marked and firmly established are these differences that it is almost possible to forecast at the present time the outcome of a particular case by the personnel of the particular judge or judges composing, for the time being, the Court wherein that case is pending.

Aside from this, speaking without regard to any particular circuit so as not to be construed as insinuating anything against any particular judge or court, one of the most stubborn elements encountered in these cases has been that of local prejudice against the enforcement of a foreign liability such as that here involved.

This element has manifested itself in many ways during the progress of these causes, amongst which may be noted the marked disposition to strain every possible technical point to defeat a remedy instead of applying the wholesome rule *ubi jus ibi remedium*.

If we are right in principle in these causes we should have the benefit of an enforcement of the appropriate remedy without the compulsion of exhausting that benefit in endless litigation.

If we are wrong in principle, the creditors of this insolvent corporation are not benefited and the stockholders are wronged by perpetuating the controversy.

Under these circumstances, as the courts below have been unable to reach any uniform conclusion on these general principles and the whole subject is still considered by the stockholders at least as open, we have felt justified in asking this Court to review and settle these conflicting opinions.

It may, and doubtless will, be insisted in opposition to this application that, conceding all that is claimed for the conflict of opinion upon the general questions involved, the present is not an appropriate proceeding wherein to attempt such a review as that sought.

Hereunder it may be suggested that one single question was decided in the present cause, to wit: the right to proceed against a number of stockholders in equity, and that the general principles or merits were not considered.

The answer to this technical objection is that the cause being in equity the entire record is before the Court for review.

The Court *may* in any event review the entire record, and, in case the reason assigned for the decree below was found erroneous, viz.: that there was no jurisdiction in equity because of the existence of an adequate remedy at law, must so review the record within the rule enunciated in Riddings vs. Johnson, 128 U. S. 212-218, as follows:

"Therefore, if there was nothing more in the case than the question of jurisdiction, we should be obliged to reverse the decree at once, and send the case back for further proceedings. But, on an appeal in an equity suit, the whole case is before us, and we are bound to decide it so far as it is in a condition to be decided. The bill was dismissed on demurrer for want of jurisdiction. Though the court below may have erred in dismissing it on this ground, yet if we can see that there is any other ground on which it ought to be dismissed, for example, want of equity on the merits, we must affirm the decree. This makes it necessary that we should go into a further examination of the case made by the bill and supplemental bill."

The abstract and isolated question of jurisdiction should not be made an obstacle to the present application.

It is only necessary to call the attention of the Court to the opinion of the Court of Appeals below in the following respect, viz.:

"Several demurrers were interposed, but it is not necessary to refer to them separately or in detail. The points urged in their support are in substance: (1) That the complainant's appointment as Receiver by the Minnesota Court did not entitle him to sue as such in the Circuit Court of the United States for the Eastern District of Pennsylvania. (2) That the defendants here were not bound by the proceeding in Minnesota. (3) That irrespective of any other question the suit in equity was not maintainable because there was an adequate remedy by separate action at law against each of the stockholders who were joined as defendants in the bill.

"We strongly incline to the opinion that the two points first stated might well have been sustained. This Receiver is but a creature of the Court which appointed him and no legal title is vested in him. Therefore, his asserted right to sue in another jurisdiction cannot be conceded unless the law as declared in Booth vs. Clark (17 How. 322) has been changed in this respect by the decision in Rolfe vs. Rundle (103 U. S. 322), and we are not prepared to say that it has been.

Hale vs. Hardon, 87 Fed. Rep. 283.

"None of the defendants was a party to the proceeding in the Minnesota Court, and while we do not decide the matter, because it is unnecessary to do so, it is not to be inferred that we assent to the proposition that because stockholders of a corporation are so very privy in interest as to be bound by a judgment against it, they are also bound by a decree that they individually shall wholly or partially pay its indebtedness, although they have never had a day in Court to controvert the existence of the facts upon which their obligation to do so is dependent."

to demonstrate that that court has substantially committed itself on the merits of the general propositions involved and that further litigation in any form of procedure whatsoever is only postponing an application to this court to review and finally pass upon the principles involved.

The whole case was submitted to the Court of Appeals below after exhaustive arguments addressed, not only to the question of jurisdiction in equity, but also the general principles involved in the merits, with the result as indicated in the portion of the opinion quoted, *supra*.

No useful end can be subserved either for the parties or the Court to commence actions at law *de novo* in that circuit.

The Circuit Court of that Circuit has already indicated in Wigton vs. Bosler, 102 Fed. 70, its dissent from the decision of the Circuit Court of Appeals of the First Circuit in Hale vs. Hardon, 95 Fed. 447.

This, coupled with the decision of the Court of Appeals in the case at bar excerpted from *supra*, is sufficiently indicative of the fact that further litigation there must be had, if at all, only as a stepping stone to a future application to this Court in another case instead of in that at bar.

A further pertinent reason for the present application grows out of the question of the statute of limitations.

We understand that any further action in the jurisdiction indicated is to be met by this additional supposed defense. The situation presented in this regard is as anomalous as it is interesting.

The original suit instituted in the Third Circuit was, as explained in our petition, Elkhart National Bank vs. Northwestern Guaranty Loan Company. In deciding that case (87 Fed. Rep. 252) the Court of Appeals of the Third Circuit, while denying jurisdiction in an original proceeding, used the following pertinent language:

"The laws of Minnesota impose on such stockholders a personal liability equal to the par value of the stock held, and render them subject to call for payment of so much thereof as may be necessary to pay creditors after the company's assets have been exhausted. * * *

"The plaintiff says in the brief furnished us: 'The laws of Minnesota impose the ordinary stockholders' liability, and prescribe an essentially equitable remedy for its enforcement.' This is true; and the remedy seems to be fully adequate to secure the creditors' interests, under all circumstances. * * *

"The statute seems to contemplate a proceeding against all stockholders, in corporations organized under the laws of the state, and a final decree therein. * * *

"Of course if the decree is conclusive the Court could not enforce it against foreign stockholders, but in such case it might be enforced by auxiliary equity proceedings where the stockholders reside."

Conformably to this holding, which was then and still is believed to correctly express the rule of procedure, the auxiliary

bill in the case at bar was filed and resulted in a denial, both by the Circuit Court and Circuit Court of Appeals of that circuit, of the right to proceed in equity, neither of the latter courts dignifying the previous opinion by the Court of Appeals by so much as allusion or reference.

Assuming without conceding that there is anything in the claim of the statute of limitations, as applied to future actions at law, the creditors under the circumstances detailed above should not be forced to meet that position until full opportunity had been given to demonstrate that the equitable remedy was both proper and appropriate.

But, aside from this, the question of right to proceed in equity against the stockholders of a given jurisdiction presents a phase all important, not only in the case at bar but in analogous cases.

It requires no argument to demonstrate to the Court that where in a given jurisdiction fifty or a hundred stockholders reside, the bringing of separate and distinct actions at law is almost prohibitive.

The question of the right of a receiver to join in a suit in equity claims against a number of stockholders was deemed of sufficient importance to be certified to this Court in McDonald vs. Williams, 174 U. S. 397, referred to in the accompanying petition, but was not found necessary to be answered.

Jurisdiction was sustained in a similar case on the ground of avoiding multiplicity of actions by the Court of Appeals of the Sixth Circuit in Bailey vs. Tillinghast, 99 Fed. Rep. 801.

Under the decisions of this Court in repeated actions, the claims of creditors against stockholders were clearly equitable within the rules announced in

Pollard vs. Bailey, 20 Wall. 520-526.

Terry vs. Little, 101 U. S. 216.

Patterson vs. Lynd, 106 U. S. 519.

National Bank vs. Francklyn, 120 U. S. 747,

and were so held and recognized as such by the Court of Appeals of the Third Circuit in its earlier decision above.

By analogy to the decision of this Court in Hancock National Bank vs. Farnham, 176 U. S. 640, the force and effect of the decree rendered in the parent proceeding was to be determined with reference to local law.

As thus determined by the Supreme Court of that state in Hanson vs. Davidson, 73 Minn. 454, the action required to be brought is the original action for the sequestration and distribution of the fund to be derived from the stockholders' liability and the decree entered therein is a final and conclusive determination of the amount (unless impeached for fraud) for which the stockholders are liable.

Equity possesses jurisdiction to entertain an auxiliary bill to enforce that decree, as held by the Court of Appeals of the Third Circuit in its earlier decision.

The ground contended for coincides with the rule announced by this Court in Shields vs. Thomas, 18 How. 253-262, thus: "Amongst the original and undoubted powers of a court of equity is that of entertaining a bill filed for enforcing and carrying into effect a decree of the same or a different court of equity, as the exigencies of the case or the interests of the parties may require."

It is not, however, proposed, and perhaps is inappropriate, to present at this time any detailed discussion bearing upon the question of jurisdiction.

The same question of right to proceed in equity is involved in the other cases pending in the Federal Courts, rendering its final determination here peculiarly appropriate.

All the various causes pending in the several jurisdictions turn, as hereinbefore stated, on the main propositions and principles heretofore suggested. The question of jurisdiction in equity has been, we believe, tinctured by the feeling of hos-

tility and prejudice against enforcing the liability in any form of action whatsoever.

If the principles governing and determinative of the merits be once definitely ascertained, jurisdiction in equity will not be difficult to demonstrate either in the light of principle or authority.

This Court granted a Writ of *Certiorari* to the Court of Appeals for the Second Circuit in the case of Whitman vs. Oxford National Bank, reported in 176 U. S. 559. That case involved the question of the right of extra territorial enforcement of a superadded stock liability created by the laws of the State of Kansas. By those laws and the interpretation of the local courts, the liability created ran to and was enforceable by creditors severally and independently. The questions involved in that case had, at the time of the granting of the Writ of *Certiorari* therein by this Court, been considered and passed upon by the Circuit Courts and Circuit Courts of Appeals in a comparatively large number of circuits. So far as the Federal Courts are concerned, the course of decision in those cases had been practically uniform in favor of the contractual feature of the liability and the right of enforcement thereof in any form wherein jurisdiction of a stockholder might be had or obtained. So far as we are presently advised no precedent existed in the Federal Courts in any of the various districts wherein this liability had come in question opposed to the general conclusions above mentioned.

There is far stronger reason for invoking a review in the case at bar than in the case last cited. Here the various judges and courts have been unable to reach any substantial accord in the general questions involved.

The case here involves a far more equitable rule than that presented by laws similar to those of the State of Kansas, in that it contemplates equal protection for all creditors, while

the laws of Kansas inaugurate a race of diligence and present no features of equitable character whatsoever.

Notwithstanding the obvious equitable character of the liability involved, the very features of the law which commend themselves are made the basis of technical and abstruse objections to prevent its enforcement.

Believing, as stated in the inception of this preliminary brief, that the present application is fully justified by the facts herein and in the accompanying petition stated, we submit the matter to the favorable consideration of the Court, reserving a more detailed presentation until the case is formally before this Court for review.

Respectfully submitted,

M. H. BOUTELLE,

For Petitioner.

W. E. HALE,

CHARLES C. LISTER,

Of Counsel.

No. 290.
Brf. of Dillon & Boutelle for Pet's
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42 DEY STREET, NEW YORK.
Supreme Court U.S.
FILED
OCT. 9 1901
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

Filed Oct. 14, 1901.

OCTOBER TERM, 1901.

No. ~~19016~~. 290.

WILLIAM E. HALE as Receiver,
Petitioner,

against

EDWARD P. ALLISON *et als.*,
Respondents.

To JOHN G. JOHNSON, Esq., attorney for Respondents:

Please take notice that the petitioner in the above entitled cause will present to the Supreme Court of the United States on Monday, October 14, 1901, at the opening of the court on that day, or as soon thereafter as counsel can be heard, a motion to advance the above-entitled cause under and pursuant to the rules of that Court in that behalf made and provided, a copy of which motion is hereto attached.

JOHN F. DILLON.
M. H. BOUTELLE.
A. L. PINCOFFS.
Attorneys for Petitioners.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1901.

No. 18016.

WILLIAM E. HALE as Receiver,
Petitioner,

against

EDWARD P. ALLISON *et als.*,
Respondents.

On Certiorari to the United States Circuit Court of Appeals of the Third District.

Comes now the petitioner, by his counsel appearing in behalf and moves the Court to advance the above-entitled case for hearing.

The grounds of said motion are as follows:

1. That the questions presented in said cause are of general public interest, involving the security to corporate creditors provided by laws of the State of corporate organization in imposing liability for corporate indebtedness upon stockholders.

2. That the particular phases of said questions as here presented and the statutes creating the liability here involved, embrace and comprehend the legislation upon similar subject matter of a number of different States in which proceedings have been had or taken in foreign jurisdictions and in which the United States Circuit Courts and United States Circuit Courts of Appeal in different circuits have pronounced decisions wholly at variance and irreconcilable, as will be illustrated by the following:

Hale *vs.* Hardon, Circuit Court of Appeals of the First Circuit, 95 Fed. Rep., 747.

Kirtley *vs.* Holmes, Circuit Court of Appeals of the Sixth Circuit, 107 Fed. Rep., 1.

Hale *vs.* Allison, Circuit Court of Appeals of the Third Circuit, 106 Fed. Rep., 258.

Wigton *vs.* Bosler, Circuit Court, Third Circuit, 102 Fed. Rep., 70.

National Bank *vs.* Sayward, Circuit Court of Appeals of the First Circuit, 91 Fed. Rep., 443.

Elkhart National Bank *vs.* Northwestern Guaranty Loan Company, Circuit Court of Appeals of the Third Circuit, 87 Fed. Rep., 252.

The details of such conflict, *as applicable to the present cause*, are set forth in the petition for the writ of *certiorari* in this case, a copy of which, for convenience, is annexed and made part of this motion. In support of this statement your petitioner particularly refers the Court to the history of the conflicting litigation arising out of the insolvency of this same corporation, as stated in the said petition for the writ of *certiorari*, on pages numbered 5 to 11 in the copy hereto annexed.

That the questions here presented, and the class of statutory stock liability here involved, have never come before this Court for its consideration or decision.

That the present litigation grows out of the insolvency of the Northwestern Guaranty Loan Company, a corporation created under the laws of the State of Minnesota.

That the stockholders of said corporation were and are scattered throughout diverse States and jurisdictions.

That aside from the litigation here depending, a large number of causes involving similar questions to those here presented, are depending in the Circuit Courts of the United States in and for the respective Districts of Maine, Massachusetts, Rhode Island, Vermont, New York and New Jersey.

That the causes last referred to herein embrace and include liabilities agregating upwards of a quarter of a million dollars, and the same are in various stages before the various courts mentioned. That certain of said causes are for trial upon issues framed in the several Circuit Courts, others have been tried with diverse results as to the merits of the questions involved, and that others are pending before the Circuit Courts of Appeal.

That all of said causes involve the questions here presented for determination, and that the litigation therein has been and is being fostered and encouraged by the diverse and contrary rulings of the courts.

That the cause under consideration presents and involves, amongst other questions, the effect of a judgment and decree rendered by the courts of the State of Minnesota in sequestration proceedings to which the corporation was a party, upon stockholders of the corporation outside that State and who did not appear in the proceedings where such decree was rendered and thus involves the question of "due faith and credit" to the judicial proceedings as provided by Section One, Article Four of the Constitution of the United States.

That a large number of causes growing out of the same corporate insolvency and brought by petitioner herein are depending at the present time in the state courts of various of the States, notably Maine, Rhode Island and New York, wherein the question of "due faith and credit" to the decree of the courts

of the State of Minnesota is directly involved and in all whereof the ultimate determination of that question must be referred to this Court.

That in the administration confided to petitioner and here in part involved, the diversity and contrariety of opinion in the various courts and the litigation thereby entailed has already extended over a period of upwards of four years and the rights of creditors in interest been impaired by protracted contests with the expense necessarily entailed.

That owing to the large number of claims involved in such administration, delay in final and authoritative decision has caused and is causing irreparable damage; that the status of such claims is constantly changing by deaths and insolvencies and claims otherwise collectible are becoming valueless; that in cases of deaths, the rights of petitioner are complicated by the conflict of jurisdiction between the courts of common law and equity jurisdiction and the State courts of Probate for the administration of decedents estates; that in certain causes property has been transferred to evade the liability in question and petitioner and the creditors by him represented are remediless to proceed to protect their interests by inability to obtain judgment or the refusal of the court to enter judgment, where the decision has been favorable to petitioner, until the questions presented on the present *certiorari* are decided by this court.

Forasmuch as the questions here presented for determination are common to all the litigation depending in the various of the United States and State courts, and as the determination thereof will be decisive and controlling on such courts, and as the rights and interests of all the several parties will be best subserved and said several courts be saved needless controversy and litigation.

The present motion is made in order to ask the Court to advance this case for an early hearing to the end that said several questions may be finally and authoritatively determined and that further delay and needless and unnecessary litigation may be avoided and that petitioner may have the benefit of the provisions of Rule 26 of this Court, permitting the advancing of cases.

Respectfully submitted,

JOHN F. DILLON,
M. H. BOUTELLE,
A. L. PINCOFFS,
Attorneys for Petitioner.

Copy of Petition for Certiorari referred to in the foregoing Motion.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

Ex parte WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION).

Petitioner.

IN THE MATTER OF THE PETITION FOR WRIT OF *CERTIORARI* REQUIRING THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT TO CERTIFY TO THE SUPREME COURT FOR ITS REVIEW THE CASE OF

W. E. HALE, Receiver,

Appellant,

vs.

EDWARD P. ALLISON *et al.*,

Appellees.

To the Honorable The Supreme Court of the United States:

The petition of W. E. Hale, as receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company (a corporation), respectfully shows to this Honorable Court as follows:

That the Northwestern Guaranty Loan Company was, at all times hereinafter mentioned, a corporation organized under the general laws of the State of Minnesota.

That the laws of that state, and more particularly the Constitutional provisions thereof, impose personal liability upon the stockholders of all corporations of the class of said Northwestern Guaranty Loan Company, for the corporate debts, in an amount not exceeding the amount of the par value of the stock held by each.

That the liability thus created as interpreted by the decisions of the highest courts of that state is contractual, runs to all and several the corporate creditors in common, and contemplates the creation of a fund for the equal benefit of all such creditors.

That the remedial laws of said state, as interpreted by the highest court thereof contemplate primary jurisdiction for the purpose of enforcing this stock liability in the courts of corporate domicile, and for that purpose provide for the institution therein of an equitable action by corporate creditors for obtaining an account of the debts and assets of the corporation, determining the deficiency, if any, of the latter, and apportioning such deficiency amongst all stockholders in common, according to their respective holdings of stock, and not exceeding in any event the maximum liability provided by law.

That by said remedial laws provision is further made in analogy to the rules and practice of courts of equity for giving notice of the pendency of such case to all creditors and limiting the time within which such creditors shall intervene therein or be barred from participation in the recovery and fund thereby contemplated.

That further provision is made by said laws authorizing and empowering the court to appoint a receiver or receivers for the purpose of effectuating and carrying out the purposes thereof.

As further interpreted by the courts of that state the provisions incorporated in the laws aforesaid, both those imposing the liability and those prescribing the conditions whereon it may be made available, are impliedly incorporated in the contract consummated by the stockholders in the act of subscribing or taking stock and mutually binding upon stockholder and creditor alike. In consequence whereof it is held that the creditor may avail himself of the liability in no other manner than in a proceeding calculated to preserve and protect the rights of all creditors in common and may not proceed in his own individual behalf.

And it is further held in consequence of the same contractual theory that the ascertainments contemplated to be made by the court in the original proceeding by the creditors, upon which the liability may be made available, viz.: the debts, assets, the deficiency of the latter and the amount in which all stockholders in common shall be assessed to make good such deficiency, are final and conclusive on all corporate stockholders whether parties to the original proceeding and served with process therein or not.

Your petitioner further avers that in 1893, in proper proceedings had to that end in the courts of the State of Minnesota, and in accordance with the laws of that state, the Northwestern Guaranty Loan Company was adjudged insolvent and a receiver appointed for the purpose of winding up its affairs.

That thereafter, and in conformity to the local laws of that state, hereinbefore mentioned, a suit was duly instituted by and on behalf of the several

creditors of that corporation, against the corporation, its general receiver, and all and several the stockholders thereof.

That pursuant to the order of the Court therein some six or seven hundred creditors from many and diverse states holding claims and demands against the corporation aggregating upwards of three million dollars duly intervened therein.

That process issued against the corporation, its general receiver in insolvency, and all and several the stockholders residing within the State of Minnesota.

That thereafter such proceedings were had in conformity to the laws of that state in the cause last aforesaid, that a decree was entered therein adjudging and decreeing, amongst others, that the maximum liability provided by the law of that state, as hereinbefore stated, be enforced against all corporate stockholders in common, and that to that end your petitioner was duly appointed and qualified as receiver and was duly authorized and empowered to take such steps as might be necessary in the premises for the purpose of enforcing and collecting such ascertained liability.

That the indebtedness ascertained by said decree as due and owing to the creditors intervening therein was upwards of three million dollars, as aforesaid, for which judgment was duly rendered against the said corporation.

That the assets and securities in anywise available for the payment of said indebtedness, as ascertained by said decree, was four hundred and fifty thousand dollars, and the deficiency upwards of two million five hundred thousand dollars.

That the total par value of outstanding stock (and therefore the maximum measure of stock lia-

bility) was one million two hundred and fifty thousand dollars, or less than one-half the ascertained deficiency.

Your petitioner further avers that said stock was, at all the times herein referred to, held by some five hundred different parties and corporations of whom approximately five-sixths in amount and upwards of four hundred in number resided, during all the times herein mentioned, without the State of Minnesota.

That the residences of such stockholders embrace many and diverse jurisdictions, including herein the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, and other states not here necessary to mention.

That subsequent to the proceedings had and taken, as hereinbefore stated, in the said courts of Minnesota, and the rendition and entry of the decree in that cause, as hereinbefore stated, various actions and proceedings were instituted in several of the aforesaid jurisdictions outside the State of Minnesota for the purpose of enforcing the aforesaid stockholders' liability.

That amongst said several proceedings, so instituted as aforesaid, an original bill in equity was filed in the United States Circuit Court in and for the Eastern District of Pennsylvania, by a judgment creditor of the said Northwestern Guaranty Loan Company, in behalf of itself and all other creditors who should join or participate therein, and against all and several of the stockholders of that corporation residing in and citizens of the commonwealth of Pennsylvania.

That thereafter such proceedings were had in said cause that a demurrer was interposed therein, by and on behalf of the several defendants, and a decree entered in said Circuit Court dismissing com-

plainant's bill, from which an appeal was thereafter perfected to the Court of Appeals of the Third Circuit. That upon said appeal the last named Court of Appeals held, substantially, that no jurisdiction existed in a court outside of the State of Minnesota to enforce in an original proceeding the liability imposed on corporate stockholders by the Minnesota laws; that those laws contemplated investing the courts of the domicile with primary jurisdiction in the premises, and that the proceedings to determine the necessity for the amount in which the liability should be enforced should be had in such domiciliary courts, and thereafter as against non-resident stockholders relief might be obtained in an auxiliary proceeding in equity against stockholders in foreign jurisdictions.

(Elkhart Natl. Bank *vs.* Northwestern Guaranty Loan Co., 87 Fed. Rep., 252.)

That the holding of the said Court of Appeals of the Third Circuit, in so far as it adjudicated and determined that an original bill would lie not in a foriegn jurisdiction for the purpose of enforcing liabilities of the class in question, is in substantial accord with the similar conclusions of the Court of Appeals of the First Circuit in National Bank *vs.* Sayward, 91 Fed. Rep. 443.

That in accordance with the holding of the Court of Appeals for the Third Circuit above, determining, as aforesaid, that remedy might be had by auxiliary proceeding in equity after a decree of the domiciliary court determining the necessity for and amount in which all stockholders should be held to contribute, to enforce that decree, your petitioner caused to be filed in the Circuit Court for the Eastern District of Pennsylvania such an auxiliary bill against the several stockholders, residents and citizens of that jurisdiction.

That thereafter such proceedings were had that the several defendants in said bill interposed common demurrers, challenging, (1) the jurisdiction of a court of equity, (2) the right of your petitioner to sue, (3) the effect of the Minnesota decree, and (4) the right to relief on the merits, all as will more fully appear from the certified copy of the record herewith produced and accompanying this application. That upon the hearing of said demurrers it was held and determined by the Circuit Court that no jurisdiction in equity existed, no reference being made in the decision to the conclusions and the previous holding of Court of Appeals of that circuit in the case of Elkhart National Bank *vs.* Northwestern Guaranty Loan Company, *supra*, growing out of the insolvency of the same corporation, involving the same liability and the same foreign laws.

That upon the aforesaid determination of the Circuit Court, a decree was entered in said cause dismissing your petitioner's bill without prejudice, and therefrom an appeal was duly taken to the Court of Appeals of the Third Circuit, as will more fully appear from the record herein.

That upon said record the cause came on for hearing before the Court of Appeals of the Third Circuit and resulted in an affirmance of the decree of the Circuit Court for want of jurisdiction in an equitable proceeding and practically deciding that the several demurrers as presented might have been sustained upon the merits without regard to the jurisdictional feature.

From the decision of the Court of Appeals last referred to, your petitioner presents this application for *certiorari* directed to the Court of Appeals of the Third Circuit.

The grounds of this application are as follows:

First. The importance of the general questions involved herein, and

Second. The hopeless and irreconcilable confusion evidenced by the decisions in the various circuits, between the Circuit Courts of Appeals, as well as the Circuit Courts and Circuit Courts of Appeals of different circuits.

Your petitioner further shows and states to the Court that suits or actions are now pending in all the several jurisdictions hereinbefore referred to, involving the questions here sought to be reviewed and growing out of the insolvency of this same corporation.

Your petitioner further shows that in a certain action heretofore instituted at law, by your petitioner, as receiver as aforesaid, in the Circuit Court for the District of Massachusetts to enforce the liability in question, the decision of the court practically denied a right or remedy to enforce the liability in any form of action whatsover. (Hale *vs.* Hardon, 89 Fed. Rep., 283.)

That on writ of error to the Circuit Court of Appeals of the First Circuit, that decision was reversed by a divided court and the right held enforceable and the remedy held properly conceived.

(Hale *vs.* Hardon, 95 Fed. Rep., 747.)

That thereafter, and subsequent to the last decision of the Court of Appeals of the First Circuit, in a case involving similar laws and presenting similar questions arising in the Circuit Court for the Eastern District Pennsylvania wherein the opinion was delivered by Mr. Circuit Judge Dallas (by whom the opinion in the Court of Appeals in this case was written), the Circuit Court of Pennsylvania expressly declined to follow the Circuit Court of Appeals of the First Circuit and denied the right to enforce the liability. (Wigton *vs.* Bosler, 102 Fed. Rep. 70.)

Your petitioner further shows that the decision of the Court of Appeals in the case here sought to be reviewed practically follows Wigton *vs.* Bosler and is diametrically opposed in this regard to the decision of the Court of Appeals of the First Circuit in Hale *vs.* Hardon, *supra.*

Your petitioner further avers that said cause, as presented by the bill and demurrers to the Circuit Court and Circuit Court of Appeals herein, covered and embraced as will more fully appear from the accompanying records, on the merits, the following propositions, viz.:

1st. The right of your petitioner, as receiver, to sue in a jurisdiction outside of that by which he was appointed.

2d. The effect, as conclusive or otherwise, of the proceedings had in the courts of corporate domicile on non-resident stockholders.

3d. The right to enforce a liability of this class in any method or form of procedure in a jurisdiction outside of that by which the corporation was created.

And your petitioner further avers that each and all of said several questions are involved in various litigations now pending in the Federal Courts of the various jurisdictions hereinbefore indicated, as well as in the cause at bar.

Your petitioner further avers that in each of said causes, as well as that here pending, the first question above, viz.: the right of the receiver to sue, has presented and given rise to conflict of opinion, based upon the proper interpretation of previous decisions of this court, notably Booth *vs.* Clark, 17 How. 323, and Relfe *vs.* Rundell, 103 U. S. 322, as indicated by the opinion of the Court of Appeals in the cause here sought to be reviewed, as well as the Court of Appeals of the First Circuit therein decided and hereinbefore referred to.

That upon the second and third questions above, viz.: the effect of the proceedings of the Minnesota Court, the case in principle is, as your petitioner believes, covered by the decisions and precedents of this Honorable Court, but in the absence of direct precedent impracticable distinctions are suggested rendering the principles enunciated by this court inapplicable.

Your petitioner further avers that jurisdiction in equity in the case at bar was clearly sustainable on each and all the following grounds, viz.:

1st. That the right asserted and sought to be enforced as determined and interpreted by the local law of the state by which the same was so created was equitable in character.

2d. That the proceeding had for its end and object the enforcement of an equitable decree, and that within the principles announced by this Honorable Court, in the case of Hancock National Bank *vs.* Farnum, 176 U. S. 640, the decree rendered in the local courts of Minnesota, while not equivalent to a personal judgment against stockholders not served with process or appearing in that cause, was a *quasi* decree against all corporate stockholders, in so far as it determined the necessity for and amount in which all stockholders should be held to contribute, and was therefore a decree which a court of equity possessed jurisdiction to enforce.

3d. That sufficient ground for the interposition of equity was shown in the common origin of the claims and the similarity of the questions of law and fact involved therein, thus bringing the case clearly within that branch of equitable jurisdiction having for its end and object the prevention of a a multiplicity of suits.

Your petitioner further avers that error was assigned, as more fully appears from the record ac-

companying this petition, in the Court of Appeals, to the denial of jurisdiction in equity upon each of the grounds aforesaid, and to the refusal of the Court to sustain the bill on the merits.

That jurisdiction on the first two grounds was clearly held in the previous decision of the same Court of Appeals in Elkhart National Bank *vs.* Northwestern Guaranty Loan Company, *supra*, in conformity with the direction whereof the present suit was instituted in that circuit.

That upon the third ground, without regard to numerous precedents which might be cited, the case was fully covered by the decision of the Court of Appeals of the Sixth Circuit in Bailey *vs.* Tillinghast, 90 Fed. Rep., 801, to which the decision in the cause under consideration is diametrically opposed on the question of jurisdiction.

Your petitioner further avers that this cause, as presented to the Court of Appeals of the Third Circuit, involving the right of a receiver appointed by a court of a foreign jurisdiction to join, in one proceeding, demands against a number of stockholders having the same origin and presenting similar questions of law and fact, is substantially parallel with the question certified by the Court of Appeals of the Second Circuit to this Honorable Court, but not found necessary to be answered, in the case of McDonald *vs.* Williams, reported in 174 U. S., 397.

Your petitioner further avers that all and several the questions herein suggested may be appropriately passed upon and finally decided by this Court on review of the decision of the Court of Appeals of the Third Circuit herein. And that by such decision an immense amount of litigation now pending and undetermined in various of the Circuit Courts of the United States growing out of the

same insolvency as that here involved, and presenting the same questions of law and fact, will be relieved of the conflict and embarrassment arising out of the diversity of opinion announced by the various courts in these causes, as hereinbefore stated. That unless said questions be so finally passed upon and determined, the enforcement of the rights of the creditors of this insolvent corporation is confronted by a multitude of litigation, in and of itself practically prohibitive, by reason of the inability of the various courts to determine and agree on the basic principles involved.

Your petitioner further shows and states to the Court, that jurisdiction in the said cause here under consideration was invoked on the ground of diversity of citizenship, and that the decision of the Court of Appeals under the Act of Congress creating that Court, approved March 3, 1891, is final.

WHEREEORE, Your petitioner respectfully prays that a Writ of *Certiorari* may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding said Court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in the said cause therein entitled W. E. Hale, as Receiver, Appellant, *vs.* Edward P. Allison, *et al.*, Appellees, to the end that the said case may be reviewed and determined by this Court, as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate. And in conformity with Section 6 of the Act of Congress, entitled "An act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891, and

that said decision and judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court.

And your petitioner will forever pray, etc.

W. E. HALE,

Receiver for the collection and enforcement of the liability of stockholders.

By W. H. BOUTELLE,
Attorney and Counsel for Petitioner.

No. 284

MAR 7 1902

JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 284.

WILLIAM E. HALE, as Receiver for the Collection and Enforcement of the liability of stockholders of The Northwestern Guaranty Loan Company, (a Corporation),

Petitioner,

vs.

EDWARD P. ALLISON, et als.

On writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF IN BEHALF OF PETITIONER.

WILLIAM E. HALE,
CHARLES C. LESTER,
A. L. PENCOYD,
Of Counsel.

M. H. BOUTELLE,
For Petitioner.

PIONEER PRESS CO., St. Paul, Minn.

SUPREME COURT OF THE UNITED STATES.

October Term, 1901.

No. 290.

WILLIAM E. HALE, as Receiver,

Petitioner,

vs.

EDWARD P. ALLISON et als.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF OF PETITIONER.

This cause comes before the court on a writ of *certiorari* to the Circuit Court of Appeals for the Third Circuit, to review a decision affirming a decree of the Circuit Court for the Eastern District of Pennsylvania, dismissing a bill filed by petitioner, for the purpose of enforcing the liability of the defendants as stockholders of an insolvent Minnesota corporation.

STATEMENT OF THE CASE.

The present suit grew out of the insolvency of the Northwestern Guaranty Loan Company, a corporation, organized under the laws of the State of Minnesota, and involved the right to enforce a liability imposed by the laws of that state upon corporate stockholders.

Complainant (petitioner here) is a receiver, appointed by the [illegible] of the state of domicil, in conformity to the provisions of the laws of that state, for the purpose of enforcing and collecting the liability indicated.

The several defendants were stockholders of the insolvent corporation, and citizens and residents of the commonwealth of Pennsylvania.

The stock liability provided by those laws, as indicated both by the statutes and decisions of the highest court of that state, in terpreting the same, contemplates the creation of a fund for the equal and common benefit of all corporate creditors. The liability is construed as a special or quasi asset as to creditors, and is not enforceable by the corporation or its successors in interest as receiver, assignee, or otherwise.

Provision is made by the local law for rendering this fund available, whereunder suit is, in the first instance, to be instituted in the appropriate courts of the domicil, to the end that an account may be taken and stated of the corporate debts and assets, the deficiency ascertained, and an assessment or call made upon the several stockholders for meeting this deficiency and for the appointment of a receiver to collect and distribute the same, under the jurisdiction and order of the court, equally and pro rata, amongst all creditors in interest.

The allegations of the bill as filed may be summarized as follows:

By the Minnesota Constitution (Art. 10, Sec. 3), the so-termed statutory or superadded liability is imposed on stockholders of all corporations, with certain exceptions not here material. The Northwestern Guaranty Loan Company was organized under the General Laws of that state in 1884, for the purpose of conducting a general investment business, having its principal office at Minneapolis, Hennepin county, that state.

In 1893, in proceedings had and taken against said loan company, in the courts of its domicil, it was adjudged insolvent under the general insolvency laws of that state, and a receiver appointed to wind up its affairs.

Subsequent to this adjudication, the creditors, in conformity to the laws of that state, caused to be instituted in the local courts, a suit in equity, to enforce the liability of stockholders above referred to, and to that end, for an accounting of the corporate debts and assets, the determination of the deficiency of the latter, and an ascertainment or call for the amount necessary to be contributed by the stockholders for liquidating such deficiency, as well as for the appointment of a receiver for the collection and enforcement thereof.

Conformably to the statutes, notice was given to all creditors in interest, to become parties to the proceeding indicated, or be barred from any right of participation in the contemplated recovery.

The corporation, its general receiver, and all the several stockholders were made parties defendant and process served on all thereof, except the outside or non-resident stockholders.

The proceedings in the cause indicated resulted in a decree stating the account of the corporate affairs and determining that the total maximum liability provided by the laws of that state be assessed and collected from all stockholders of the corporation in common.

Judgments in favor of the several creditors and against the corporation were therein rendered for the ascertained indebtedness, and personal judgments were further rendered in conformity to the decree, for the ascertained liability or assessment against the several Minnesota stockholders, parties thereto.

By the same decree petitioner was appointed receiver, for the purpose of collecting and enforcing the assessment, and was thereby expressly authorized and empowered to take any other and further proceedings as might be necessary for realizing and recovering the assessment from non-resident stockholders over whom the court had not acquired jurisdiction for the rendition of personal judgments.

The decree further provided for return of the funds so collected into the court, for equal and pro rata distribution amongst the creditors, according to law.

An exemplification of the record of the judicial proceedings referred to was exhibited and attached to the bill. (Record, pages 14-98, inclusive.)

It was further alleged that the defendants were stockholders of the insolvent corporation at the date of its adjudication of insolvency and at the presentation of the bill, holding and owning respectively the number of shares therein stated.

The defendant stockholders were alleged to have been, at the times stated, non-residents of the State of Minnesota, by reason whereof, none were served in the proceedings had and taken in the courts of Minnesota, or entered voluntary appearance therein, or had contributed any part or portion of the liability stated.

The bill was framed as an auxiliary bill in aid of, and to enforce, the decree of the court in the parent suit, and prayed that the defendants should be held and adjudged to contribute to the

fund contemplated by the local laws, the amount thereby and by said decree provided.

As originally presented, the original creditor in the Minnesota proceeding was joined as a co-complainant with the receiver, but on the hearing leave was asked and obtained to dismiss the creditor from the suit. (Record, page 116.)

To this bill the defendants filed demurrers, substantially identical in form, the grounds whereof may be thus summarized:

First—That as it appeared from the bill and exhibit that the defendants were not served in the proceedings had in the Minnesota court, the judgment and decree of that court was in nowise binding or conclusive upon them;

Second—That the receiver, appointed under the proceedings had in the Minnesota court, had no standing in any other court than that by which he was appointed;

Third—That the relief sought was one which no court of equity, outside of the commonwealth of Minnesota, was required to administer;

Fourth—That if the proceedings of the Minnesota court were of any force or effect as against the defendants not served therein, there was an adequate remedy at common law.

The demurrers assigned or specified other grounds, but the substance is comprehended in the general summary above. (Record, pages 99-112, inclusive.)

On the hearing and argument before the Circuit Court, the demurrers were sustained ostensibly on the ground that the cause presented nothing of equitable cognizance, and that there was an adequate remedy, if any remedy existed, at law, and a decree followed dismissing the bill without prejudice.

From this decree an appeal was prosecuted to the Circuit Court of Appeals of the Third Circuit.

Upon hearing before that court, the decree below was affirmed.

Thereupon the present application for writ of *certiorari* was presented to this court and allowed, and a return thereto made and filed herein on May 3, 1901.

ASSIGNMENT AND SPECIFICATIONS OF ERROR.

The specifications in this regard presented to the court below are incorporated in the Record, pages 122-123.

Those intended to be presented in the present argument may be comprehended in the following:

The decree dismissing complainant's bill was erroneous in that—

First—It held that a court of equity, on the facts stated by the bill, was without jurisdiction;

Second—In that it denied the jurisdiction of a court of equity on the ground that the right asserted and shown by the allegations of the bill was equitable in character;

Third—In that it denied the jurisdiction of a court of equity on the ground that this was an auxiliary proceeding brought in aid of and to enforce an equitable decree of another court;

Fourth—In that it denied the jurisdiction of a court of equity on the ground that the present suit could be maintained for the purpose of preventing a multiplicity of suits;

Fifth—That it held the proceedings had in the courts of Minnesota and alleged by the bill were ineffectual as to defendants;

Sixth—That it denied that petitioner was possessed of capacity to sue in jurisdictions outside that of his appointment as a matter of right;

Seventh—That it denied that petitioner was possessed of capacity to sue in jurisdictions outside that of his appointment on the ground of comity;

Eighth—That it denied full faith and credit to the judicial proceedings of the courts of the State of Minnesota as required by the Constitution of the United States;

Ninth—In that it failed and refused to hold, on the allegations of the bill, that complainant was entitled to relief.

BRIEF AND ARGUMENT IN BEHALF OF PETITIONER.

It will have been observed that the ostensible ground of disposing of the present suit was that a court of equity was without jurisdiction to grant the relief sought, and that the remedy, if any, was at law.

The history, however, of this litigation in the circuit in question having for its object rendering the liability of the stockholders of the Northwestern Guaranty Loan Company, there resident, available for creditors, as well as the disposition of kindred proceedings brought there and involving similar liabilities im-

posed by statutes of other states, cannot fail to convince the most casual observer that the real and substantial ground of decision went to the merits of the cause, whereon both the Circuit Court and the Circuit Court of Appeals have so far committed themselves as to leave practically no room for doubt that, as interpreted by them, there is no available remedy in any form.

If this be not apparent from an examination of the existing precedents in that circuit, it must be admitted that the settled law there is so far unsettled and contradictory as to defy any attempt at classification or reconciliation.

At the time this litigation had its inception, the law relating to the foreign enforcement of statutory stock liabilities, in cases where the domiciliary law (as in the case at bar) provided that such liabilities should be for the equal and common benefit of all corporate creditors, was without definite or guiding precedent.

In this condition of the law an original bill in equity was filed by the creditors of the Northwestern Guaranty Loan Company, against the several stockholders thereof, residing in Pennsylvania, in the Circuit Court of the United States for the Eastern District of that state. There, as here, the defendant stockholders appeared and demurred, assigning various grounds, both to the merits and form of proceeding, and a decree was rendered dismissing the bill.

From this decree an appeal was prosecuted to the Circuit Court of Appeals of the Third Circuit, wherein the decree was affirmed, the court assigning the following reasons:

"The laws of Minnesota impose on such stockholders a personal liability equal to the par value of the stock held, and render them subject to call for payment of so much thereof as may be necessary to pay creditors after the company's assets have been exhausted. * * * * The plaintiff says in the brief furnished us, 'the laws of Minnesota impose the ordinary stockholders' liability and prescribe an essentially equitable remedy for its enforcement.' This is true; and the remedy seems to be fully adequate to secure the creditors' interests under all circumstances. * * * * The statute seems to contemplate a proceeding against all stockholders in corporations organized under the laws of the state and a final decree therein. * * * * *Of course*, if the decree is conclusive, the court could not enforce it against foreign stockholders, *but in such case it might be enforced by auxiliary equity proceedings where the stockholders reside.*"

Elkhart National Bank vs. Northwestern Guaranty Loan Co. et al., 87 Fed. Rep. 252.

In conformity to this holding, the correctness whereof, in the light of principles since then well established, cannot be doubted, the present bill was filed in that circuit as an auxiliary bill, in aid of, and to enforce, a decree of the court of corporate domicil, in all respects complying with the requirements of the decision quoted.

Notwithstanding, demurrers were again interposed, and the result announced in an opinion by the same court, wherefrom we excerpt the following as sufficiently indicative of its present attitude:

"Several demurrers were interposed, but it is not necessary to refer to them separately or in detail. The points urged in their support are in substance: (1) That the complainant's appointment as receiver by the Minnesota court did not entitle him to sue as such in the Circuit Court of the United States for the Eastern District of Pennsylvania. (2) That the defendants here were not bound by the proceeding in Minnesota. (3) That irrespective of any other question the suit in equity was not maintainable because there was an adequate remedy by separate action at law against each of the stockholders who were joined as defendants in the bill.

"We strongly incline to the opinion that the two points first stated might well have been sustained. This receiver is but a creature of the court which appointed him, and no legal title is vested in him. Therefore, his asserted right to sue in another jurisdiction cannot be conceded unless the law as declared in Booth vs. Clark (17 How. 322) has been changed in this respect by the decision in Relfe vs. Rundle (103 U. S. 322), and we are not prepared to say that it has been.

Hale vs. Hardon, 87 Fed. Rep. 283.

"None of the defendants was a party to the proceeding in the Minnesota court, and while we do not decide the matter, because it is unnecessary to do so, it is not to be inferred that we assent to the proposition that because stockholders of a corporation are so very privy in interest as to be bound by a judgment against it, they are also bound by a decree that they individually shall wholly or partially pay its indebtedness, although they have never had a day in court to controvert the existence of the facts upon which their obligation to do so is dependent."

Hale vs. Allison, 106 Fed. Rep. 258.

In the interim between the two decisions cited, the cases of Wigton vs. Bosler, 102 Fed. Rep. 70, and Tompkins vs. Craig, 102 Fed. Rep. 668, came before the Circuit Court of that circuit under statutes of the State of Iowa, of similar character to those of Minnesota here involved, and resulted in decisions adverse to the right to enforce the liability.

In view of the precedents thus indicated, petitioner feels amply justified in asserting that the real and substantial basis of decision in the case at bar arises from questions involving the merits, and that the various forms of technical objection, asserted and relied upon, merely indicate an indirect method of evading the pivotal points at issue.

A presentation, therefore, confined to the question of practice would subserve no useful purpose and leave the ultimate disposition of the more important questions as much at sea as they are now left, by the irreconcilable opinions expressed in the two successive decisions of the Court of Appeals of that circuit, hereinbefore excerpted and quoted.

Moreover, in this case, the nature of the appropriate remedy is so far connected with the nature of the right itself as to be practically decided and disposed of by the latter consideration. If we shall establish to the satisfaction of the court that the liability of stockholders, as created and imposed by the laws of the State of Minnesota, is equitable in character, contemplating the creation of a fund for the equal and common benefit of all the several creditors of the insolvent corporation; that the liability thus created is rather for contribution to the fund than directly to the creditors; that it is secondary in character and requires, as a condition precedent to its enforcement, an accounting of the debts and assets of the corporation; that the courts of corporate domicil, having jurisdiction of the corporation, are the only appropriate tribunals to exercise the requisite functions in this regard, for the purpose of determining the necessity for and amount in which the stock liability may be made available; and that the statutory provisions reserving jurisdiction in this regard contemplate and require, as a condition to the enforcement, a decree of assessment and the designation of a receiver as the representative of creditors, to enforce the same, the conclusion of the equitable nature of the right here asserted, and of the appropriate exercise of jurisdiction in chancery to enforce the decree of the domiciliary court, in auxiliary proceedings, where stockholders reside, as held by the Court of Appeals in the first of these decisions, will not be difficult to demonstrate.

These questions involve a consideration of the effect of laws of this class, imposing liability, on corporate stockholders, and how far such laws and proceedings had thereunder in the court of the domicil are binding on foreign or non-resident stockholders.

I.

CHARACTER, INTERPRETATION AND EFFECT OF LAWS IMPOSING LIABILITY.

The precedents of this court, from the earliest to the latest decisions, have uniformly established that the statutory stock liability, imposed by the laws of corporate domicil, is contractual in character and enforceable in any court where jurisdiction of the parties may be obtained.

Hawthorne vs. Calef, 2 Wall. 10;
Carroll vs. Greene, 92 U. S. 509;
Flash vs. Conn, 109 U. S. 371;
Whitman vs. National Bank of Oxford, 176 U. S. 559;
Hancock National Bank vs. Farnham, 176 U. S. 640;
Pinney vs Nelson, decided December 2, 1901, Law Ed. No. 3, page 52.

This contract, as shown by the cases cited, arises from and is consummated by the voluntary act of the stockholder in subscribing for or accepting the stock, wherefrom he is assumed to have acceded to the conditions imposed by the local laws.

It is thoroughly settled that the states, in granting corporate franchises, may impose such conditions as they see fit, and that these conditions are binding upon corporation and its constituent members alike.

Ashley vs. Ryan, 153 U. S. 436, 441;
Canadian Southern Ry. vs. Gebhard, 109 U. S. 527, 237.

Thus this court said in Carroll vs. Greene, supra:

"The legislature created the corporation and prescribed certain terms to which the stockholders should be subjected. This was an offer on the part of the state. It could be accepted or declined. There was no constraint. By taking the stock the terms were acceded to, the contract became complete, and the stockholders were bound accordingly."

Again, in Ashley vs. Ryan, supra, it was said:

"As it was within the jurisdiction of the state to grant or withhold the privilege of exercising corporate existence, it was, as a necessary resultant, also within its power to impose whatever conditions it might deem fit, as a prerequisite to corporate life."

Comprehended, as are these conditions, in the provisions of local statutes, the interpretation thereof, or of the resultant contract, presents largely a question of local law, wherein the decisions of the highest courts of the state of domicil are entitled to great, if not controlling, force and effect.

Flash vs. Conn, supra;
Chase vs. Curtis, 113 U. S. 458;
First National Bank vs. Franklin, 120 U. S. 747;
Bank vs Whitman, 76 Fed. Rep. 698;
Whitman vs. Bank, 83 Fed. Rep. 291.

The important question, and that regarding which conflict of opinion has heretofore arisen, relates to the effect, if any, to be accorded local remedial statutes, in the interpretation of the stockholders' contract

So far as such statutes have provided a several and independent remedy at law, in favor of creditors and against stockholders, the question has been fully disposed of by numerous decisions of this court.

In cases where the statutes contemplate an equitable remedy, or, in other words, that the liability shall be to all creditors in common, and the aggregate be treated and considered as a fund for equal and pro rata distribution, the precise question has not been presented to or passed upon by this court.

This question is presented in the case at bar and upon its solution depends the all important considerations here, viz.: (1) The effect of the proceedings had in the Minnesota courts on the absent stockholders, and (2) The right of the receiver to enforce and collect the ascertained liability.

If the contract of the stockholder is as broad as the conditions of the law of its origin, and that law provides, as one of its conditions, that the courts of the domicil, having jurisdiction of the corporation, shall, in case of insolvency, state an account of the corporate affairs and determine the necessity for and amount in which all stockholders in common shall contribute, the stockholder is bound upon the happening of the stated contingency.

In this view the proceedings had and taken in the courts of the domicil are binding, not by reason of the fact that they involved judicial action, but because they were expressly provided for in the stockholders' undertaking, as a condition precedent to his obligation to respond.

Similarly, if the law provides that upon the insolvency of the corporation and the ascertainment in the manner and by the stipulated tribunal, of the necessity for contribution by stockholders, a receiver shall be appointed, with authority to demand and collect such contribution, the latter's rights may be referred exclusively to the contract, and his right to sue thereunder may be predicated of the ordinary rights of a substituted or provisional promisee.

How far, then, may the provisions of the remedial law of the domicil be construed as entering into the stockholders' undertaking?

It has repeatedly been held that the law obligatory of the state of domicil is impliedly accepted and assumed by the stockholder in the act of taking or subscribing for the stock.

It is equally well established that where a statute creates a right, it may declare the purposes of its creation and provide the conditions upon which it may be made available.

In Pollard vs. Bailey, 20 Wall. 520, 526 this court said:

"The individual liability of stockholders in a corporation for the payment of its debts is always a creature of statute. At common law it does not exist. The statute which creates it may also declare the purposes of its creation and provide for the manner of its enforcement."

Again, in Terry vs. Little, 101 U. S. 216, this court said:

"The first thing to be determined in all such cases is, therefore, what liability has been created. * * * * The statute which creates the liability may declare the purpose of its creation and provide, directly or indirectly, for its enforcement."

The conditions, embraced in the remedial laws, may, and ordinarily do, materially qualify the essential features of the liability of the stockholder, as illustrated in the case last cited. In that case a creditor of a corporation, organized under the laws of South Carolina, brought an action at law against a stockholder residing in North Carolina, in the Circuit Court of the latter state. This court, upon consideration of the local law, held that the action would not lie, saying:

"If the object is to provide a fund out of which all creditors are to be paid, share and share alike, it needs no argument to show that one creditor should not be permitted to appropriate to himself, without regard to the rights of others, that which is to make up the fund. * * * * It is clear that the obligation is one that may be enforced by the creditors, but as it is to or for all creditors, it must be enforced by or for all."

The conditions imposed by the local remedial laws were thus, in effect, held to qualify alike the obligation of the stockholder and the right of the creditor, and while it was not expressly stated that these laws of necessity entered into, and were to be incorporated as part of, the statutory contract, the conclusion of the court leaves no other available inference.

If the obligation may be qualified and the conditions upon which it is to be made available prescribed by the remedial law, it is impossible, for obvious reasons, to ascertain or interpret that contract without regard to all the several qualifying conditions.

There can be but one contract, the terms whereof are to be ascertained from a consideration of all the several laws legitimately bearing thereon and prescribing the conditions upon which the obligation on the one hand shall exist, and on the other may be asserted and enforced.

The liability cannot be separated from the essential conditions attached thereto, unless we are willing to commit ourselves to the anomalous conclusion that the stockholder of a corporation, by the mere act of taking or subscribing for stock, unequivocally accepts the provisions of the law imposing liability and repudiates the laws prescribing the conditions of that liability, and without which it has neither force nor effect.

It is the clearest violation of the principles, repeatedly stated by this court,—that a state may impose such conditions as it sees fit upon corporation and stockholder alike, which are acceded to by the acceptance of the charter, or the taking or subscribing for stock,—to claim that the limit of the powers of the state are exhausted, so far as stock liabilities are concerned, by imposing the liability, and that the conditions upon which the liability may be made available are a nullity, and binding only upon the stockholders of the state of organization.

Such a claim resolves itself to the absurdity of asserting that the entire substantive contract, referable to the domiciliary law, is to be differently interpreted as to different stockholders, and that as to one class the act of taking or subscribing for the stock operates as an assumption of all the conditions embraced in those laws, and as to another, an acceptance thereof only in part.

No such conclusion is sustainable, either upon principle or authority. The resultant stockholders' contract must, of necessity, be held and construed uniformly as to every stockholder, and in every jurisdiction where rights predicated of that contract may be invoked or asserted.

In construing such a contract, in Flash vs. Conn, 109 U. S. 371, supra, the court said:

"If this were a case arising in the State of New York, we should therefore follow the construction put upon the statute by the courts of that state. The circumstance that the case comes here from the State of Florida, should not leave the statute open to a different construction. It would be an anomaly for this court to put one interpretation on the statute in a case arising in New York, and a different interpretation in a case arising in Florida."

If it be contended that by a similar course of reasoning to that here adopted, it might be claimed that every stockholder, expressly or impliedly, consented to any known or recognized form of remedy prescribed by the local law, the answer is not difficult.

Remedial laws may relate to, or embrace, mere ministerial matters of form or procedure, or may be so far substantive in character as to qualify the right itself. With the former we have no present concern. It is settled that remedial laws, strictly speaking, have *ex proprio vigore* no extra-territorial force or effect.

Story on Conflict of Laws, §§ 556, 557.

The latter class, or those embodying substantive features qualifying the right itself, are uniformly treated and construed as part and parcel of the right, and as such follow it into every forum where it may be asserted.

Walsh vs. Mayor, 111 U. S. 31;
The Harrisburg, 119 U. S. 199;
Boyd vs. Clarke, 8 Fed. Rep. 849;
P. C. & St. L. Ry. Co. vs. Heim, 25 Ohio State, 629.

In many cases where the local statute has provided a several liability and corresponding legal remedy in favor of creditors and against stockholders, the courts have announced that the same remedy was available in any forum where jurisdiction of the stockholder could be had.

And similarly, where local statutes provided an equitable remedy, the remedy at law in a foreign forum has been held unavailable.

The stress laid in these cases on the term remedy, *as remedy*, has produced misconception and confusion in the authorities. The conclusions reached are correct, not because the remedy prescribed by the local law follows the liability, *as such*, but because in its substantive provisions it modifies the liability, and an assertion

of the latter in any other form would violate the essential conditions of the contract itself.

Where the local law provides a several liability and an independent remedy, in favor of any creditor and against any stockholder, the effect of the remedial provisions is to make a contract running from each stockholder to each creditor, and the ordinary and appropriate method of enforcement is open and available in every forum.

Where, on the other hand, the local remedial laws provide an equitable remedy, as shown by this court in Terry vs. Little, supra, the resulting conditions of the contract are modified, and that contract may not be asserted in a foreign forum, without regard to those conditions, or in a method which would violate their essential provisions.

This distinction was noted by Judge Lowell, in Dexter vs. Edmonds, 89 Fed. Rep. 467, 468, in the following language:

"The distinction between remedy and substantive right is incapable of exact definition; indeed, the difference is somewhat of a question of degree. * * * * Now the difference between a right vested in all creditors to proceed in one action against all the stockholders, and a right vested in each individual creditor to proceed against any individual stockholder is much more than a difference between two remedies; *it is a difference between two substantive rights.*"

There can be no doubt, therefore, that the substantive conditions of the remedial law enter into the contract of, and are contemplated by, the stockholder in the act of taking and subscribing for his stock. To this extent it is necessary to accord force and effect to the remedial statutes to insure uniformity of right in the creditors and equality of obligation in the stockholders.

Illustrations of the effect of such substantive remedial statutes in cases of corporate insolvency might be multiplied, but the following will suffice to demonstrate the correctness of the principles contended for above:

By the law relating to national banks, it is provided that, upon insolency, the affairs of the corporation shall be administered under the supervision of the Comptroller of the Currency. Upon the ascertainment of a deficit of assets the comptroller is authorized to make an assessment upon the stockholder. This remedial provision is held and construed to have entered into the stockholders' contract, and the action of the comptroller is held final accordingly.

Upon the happening of this remedial condition, and not otherwise, the liability of the stockholder is available for the benefit of creditors.

Under the laws of certain states, upon the insolvency of corporations, it is provided that certain designated officials shall succeed to the corporate rights for the purpose of rendering the assets available for all parties in interest. Such provisions are clearly remedial in nature, but are, nevertheless, construed as entering into the contract of corporation and stockholder alike.

Such was the case of Relfe vs. Rundel, 103 U. S. 222, wherein this court said :

"The appellees, when they contracted with the Missouri corporation, impliedly agreed that if the corporation was dissolved under the Missouri laws, the superintendent of insurance department of the state should represent the company."

Similarly, in Parsons vs. Charter Oak Insurance Co., 31 Fed. Rep. 305, where the court say:

"In other words, when the complainant in Iowa took out policies of insurance in a Connecticut corporation, they took the same subject to the provisions of such charter, and they impliedly agreed that in case of insolvency and dissolution under the laws of the State of Connecticut, they would be bound by the provisions of such law, so far as the same formed part of the charter of the company."

In Hawkins vs. Glenn, 131 U. S. 319, the finality of proceedings had in the courts of corporate domicil, assessing the stockholders for unpaid capital, was called in question, and it was held by this court that the ordinary proceedings contemplated by the local law, for the purpose of rendering available the funds liable to respond to the creditors' demands, were impliedly assented to in advance by the stockholders, this court saying:

"We think it cannot be doubted that a decree against a corporation in respect to corporate matters, such as making of an assessment in the discharge of a duty resting on the corporation, necessarily binds its members in the absence of fraud, *and that this is involved in the contract created in becoming a stockholder.*"

The general principle was thus expressed by this court in Railway Co. vs. Gebhart, 109 U. S. 531, as follows:

"Such being the law, it follows that every person who deals with a corporation impliedly subjects himself to such laws of the foreign government affecting the affairs and obligations of the corporation with which he voluntarily contracts as the known and established policy of that government authorizes."

Further illustrations of the effect of remedial statutes will appear when we come to consider the precedents relating to the enforcement of stock liabilities in foreign jurisdictions.

For present purposes we shall content ourselves with the general statement that, in ascertaining the contract of the stockholder under the Minnesota laws, regard must be had, not alone to the provisions of those laws imposing the liability, but as well to those prescribing the conditions upon which it may be made available.

These latter conditions were stipulated for by the stockholder in advance, and upon the happening thereof his liability existed not alone by force of the statute but by virtue of the provisions of his express contract.

Thompson on Corporations, Vol. 3, § 3059;
Carroll vs. Greene, 92 U. S. 509, supra.

II.

CONTRACT.—MINNESOTA LAWS.

The constitutional provision imposing the liability is found, as stated, supra, in Article X, Section 3, as follows:

"Each stockholder in any corporation (except those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him."

The remedial provisions are found in sections 17-22, inclusive, of the General Statutes of Minnesota, 1878, and the same in sections 5905-5911, inclusive, General Statutes of Minnesota, 1894, as follows:

"Section 5905. Whenever any creditor of a corporation seeks to charge the directors, trustees or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his complaint for that purpose in any district court which possesses jurisdiction to enforce such liability.

"Section 5906. The court shall proceed thereon as in other cases, and, when necessary, shall cause an account to be taken of

the property and debts due to and from such corporation, and shall appoint one or more receivers.

"Section 5907. If on the coming in of the answer or upon the taking of any such account it appears that such corporation is insolvent, and that it has no property or effects to satisfy such creditors, the court may proceed without appointing any receiver to ascertain the respective liabilities of such directors and stockholders and enforce the same by its judgment as in other cases.

"Section 5908. Upon a final judgment in any action to restrain a corporation or against directors or stockholders, the court shall cause a just and fair distribution of the property of such corporation and of the proceeds thereof to be made among its creditors.

"Section 5909. In all cases in which the directors or other officers of a corporation, or the stockholders thereof, are made parties to an action in which a judgment is rendered, if the property of such corporation is insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares held by him, or so much thereof as is necessary to satisfy the debts of the company.

"Section 5910. If the debts of the company remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers, and of the stockholders, and to adjudge the amount payable by each, and enforce the judgment as in other cases.

"Section 5911. Whenever any action is brought against any corporation, its directors or other superintending officers, or stockholders, according to the provisions of this chapter, the court, whenever it appears necessary or proper, may order notice to be published in such manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and in default thereof to be precluded from all benefit of the judgment which shall be rendered in such action, and from any distribution which shall be made under such judgment."

Of the constitutional provision, supra, the Supreme Court of that state say:

"Article X, Section 3, of the Constitution * * * * is self executing, and creates an individual liability on the part of the stockholder for corporate debts to an amount equal to the amount of stock held or owned by him. * * * * The obvious intention of the provision was to add to the ordinary liability of a corporation for its debts the individual liability of stockholders. * * * * In other words, the stockholders are liable not for

the stock, but in addition thereto for a sum measured by the amount of stock."

Willis vs. Mabon, 48 Minn. 140, cited by U. S. Supreme Court in Whitman vs. Bank, supra.

To same effect:

McKusick vs. Seymour, Sabin Co., 48 Minn. 158.

This liability runs directly to creditors, and is alone enforceable by them. It is not an asset of the corporation or enforceable by it or its successor in interest as receiver, assignee, or otherwise.

Thus the Supreme Court of Minnesota say:

"But the constitutional or statutory liability is directly to the creditors. The corporation cannot enforce it. It is no part of the corporate assets."

In re People's Live Stock Co., 56 Minn. 180-185.

To same effect Olson vs. Cook, 57 Minn. 552.

International Trust Co. vs. Loan & Trust Co., 65 N. W. Rep. 78.

The receiver of the corporation cannot enforce the liability.

Minneapolis Base Ball Co. vs. City Bank, 66 Minn. 441.

The liability runs to creditors equally and in common. Thus, as stated by the Supreme Court of that state in

Harper vs. Carroll, 69 N. W. Rep. 619:

"This liability produces only a limited fund, which a few of the creditors might exhaust, leaving nothing for the other creditors. Such a result is not in accordance with the character of the creditors' right. They are tenants in common in the fund, etc."

Again in Hanson vs. Davidson, 76 N. W. Rep. 254, the same court has said:

"The stockholders' liability is limited in amount, and is not to any particular creditor, but to all of the creditors of the corporation."

The liability as indicated by the remedial statutes, supra, is secondary, that is, conditioned upon and measured by the deficiency of corporate assets.

See also Olson vs. Cook, supra.

It embraces not only those stockholders who were such when the debt was created, but all who became such before the debt was liquidated. Thus, all stockholders in a corporation at the date of

its adjudication of insolvency are liable to all the several creditors existing at that time.

Gebhard vs. Eastman, 7 Minn. 40-44;
Olson vs. Cook, 57 Minn. 522;
First Nat'l Bank. vs. Winona Plow Co., 58 Minn. 167.

In the last case cited, the Supreme Court of Minnesota say:

"All those who are stockholders at the time the action is commenced are liable, although some of them were not stockholders at the time the corporate liability was incurred."

In this connection, and while construing the provisions of the local law, it will be noted that the state of facts alleged in the present bill is identical with that existing in the case of Olson vs. Cook, supra.

In that case, as here, the corporation had been proceeded against under the provisions of the general insolvency laws of that state, wherein the corporate assets had been sequestered and were in process of administration through a receiver appointed for that purpose by the court.

In that case it was held that the liability of stockholders was not available for creditors in the insolvency proceedings, but was to be availed of in an independent proceeding as provided by the statutes of that state, viz.: §§ 5905-5911, inclusive, General Statutes of Minnesota, 1894, quoted, supra.

By reference to these statutes it will be seen that their provisions are sufficiently broad to comprehend a general proceeding for the administration of the corporate assets. In this respect, however, their functions and purposes are supreceded by proceedings instituted against the corporation under the insolvency statutes, which similarly provide for the administration of the corporate affairs.

As held by the Supreme Court of Minnesota, in International Trust Co. vs. American Loan & Trust Co., supra,

"That an action under chapter 76 would not *per se* supercede a general assignment for the benefit of creditors, was impliedly held in Olson vs. Cook, 57 Minn. 552, and expressly held in Walther vs. Seven Corners Bank, 58 Minn. 434. The reason is that, so far as the corporate assets are concerned, exactly the same result can be accomplished by their administration by the assignee under the direction of the court as by the appointment of a receiver in an action under chapter 76."

In Olson vs. Cook, supra, that court, after referring to the general purposes contemplated in the statutes cited and quoted, supra, and to the fact that in so far as those statutes provide for administering the corporate properties, they are superceded by proceedings instituted under the insolvency laws, held, that notwithstanding these sections, in so far as applicable, were governing and determinative in the special proceedings brought by creditors to render available the liability of stockholders.

This, as heretofore stated, is the precise condition presented by the facts alleged in the present bill, and the cases cited are therefore determinative of the laws governing the rights of creditors and the obligation of the stockholders.

Eliminating therefore, from the provisions of the statutes quoted, those expressly applicable to the administration of the corporate affairs, and confining our consideration to those bearing upon the ascertainment and enforcement of the stock liability, it will be observed that the conditions prescribed embrace the usual prerequisites of an ordinary creditor's bill to sequestrate a fund.

They provide for the equal participation of all creditors to be brought in by order or be forever barred.

They provide for an accounting of the assets and debts, the ascertainment of the deficiency, if any, and the apportionment of such deficiency amongst all stockholders, according to their respective holdings, and exceeding in no event the maximum liability provided by law.

They provide further for the rendition of the appropriate decrees to effectuate the general purposes contemplated and for the appointment of one or more receivers.

In all essential particulars these provisions run parallel to the ordinarily prescribed rules of equitable procedure in analogous cases, and so they have been uniformly interpreted, both by the courts of that and foreign states, wherein their consideration has been involved.

In Harper vs. Carroll, supra, the Supreme Court of that state say:

"While such liability is several, it produces only a limited fund which belongs to all the creditors as tenants in common and must be enforced in equity."

In Hanson vs. Davidson, 76 N. W. Rep. 254, the same court say:

"Equitable considerations and the statutes require that an ac-

tion of the character described by chapter 76 be brought * * * * to determine the amounts remaining due to such creditors respectively, after the assets of the corporation have been exhausted, thereby providing a basis for determining the extent of the liability of the respective stockholders."

In Elkhart National Bank vs. Northwestern Guaranty Loan Co., 87 Fed. Rep. 252, the Court of Appeals of the Third Circuit, referring to the same statutes, say:

"The plaintiff says in the brief furnished us that 'the laws of Minnesota impose the ordinary stockholders' liability and prescribe an essentially equitable remedy for its enforcement.' This is true; and the remedy seems to be fully adequate to secure the creditors' interests under all circumstances. The laws of Minnesota impose on such stockholders a personal liability equal to the par value of the stock held, and render them subject to call for payment of so much thereof as may be necessary to pay creditors after the company's assets have been exhausted. To enable the court to make a decree, it must take an account, determine the amount of assets, the extent of the indebtedness * * * * and thus determine what each should contribute, if contribution is found to be necessary."

For reasons heretofore stated, the conditions of these remedial laws necessarily enter into the terms of the stockholders' undertaking.

It could not, for instance, be contended that a single creditor could predicate a right against a single stockholder in any jurisdiction whatsoever, in view of these statutes, without violating the substantive purposes and conditions therein expressed.

Terry vs. Little, supra.

The precise nature of the contract thus evidenced may be ascertained from a consideration of the obvious purpose and policy of these laws, as interpreted by the local courts and the general principles established and applied in analogous cases.

III.

OBJECT AND PURPOSE OF THE REMEDIAL STATUTES.

The primary object obviously in view in the laws in question was securing to the creditors a fund additional to the corporate resources for the payment of their indebtedness.

The secondary purpose is equally clear to establish a uniform system for rendering this fund available and insuring its administration in such manner as to at once apportion the benefits and equalize the responsibilities.

Having regard to these, it is clear that the statutes aimed at reserving to the courts of the state, having jurisdiction of the corporation, the power to entertain the proceedings requisite for the realization and administration of this quasi asset.

So far as precedents are to be found, it must be conceded as established that under such statutes wherein the liability of stockholders is secondary, dependent upon and measured by the deficiency of corporate assets and conditioned upon the requisite accounting to establish these facts, no court outside of that of the domicil is possessed of requisite power to exercise jurisdiction in there respects.

State Nat'l Bank vs. Saward, 86 Fed. Rep. 45, affirmed on Appeal, 91 Fed. Rep. 443;

Elkhart Nat'l Bank vs. Northwestern Guaranty Loan Co., supra;

Post vs. Railroad Co., 144 Mass. 341;

Cleveland, etc., Railway Co. vs. Kent, 34 N. Y. Suppl. 427.

In Post vs. Railway Co., supra, the Supreme Court of Massachusetts, speaking through Chief Justice Field, said of such a suit:

"It is a suit against a foreign corporation which involves the relation between it and its stockholders, and in which complete justice can only be done by the courts of the jurisdiction where the corporation was created. * * * * If an assessment is to be laid upon the members or stockholders, or contribution enforced from them according to the law of the state under which the corporation is created, the courts of that state alone can afford complete and effectual relief."

The effect of such statutes is, therefore, to invest in the courts of the state of domicil, original jurisdiction in the premises, to perform the requisite functions thereby contemplated, to render the fund available.

This is the holding of the Supreme Court of Minnesota, construing these statutes and the jurisdiction intended to be exercised by the courts of that state thereunder.

In Hanson vs. Davidson, supra, that court say:

"The action required to be brought by chapter 76 is the original action for the sequestration and distribution of the fund to be derived from the stockholders' liability."

In the same case the court further states, as the object of the action, the determination of the amounts due creditors after exhausting the assets of the corporation, thereby providing a basis for determining the necessity for and amount in which the stockholders shall be compelled to contribute.

The stockholders acquired their respective holdings subject to these conditons, and therefore impliedly agreed in case of insolvency that the courts of corporate domicil should, in the manner and proceedings provided by those laws, take the several preliminary steps necessary to ascertain the amount in which the fund involved in the statutory liability should be enforced. Upon and subject to this condition, they assumed liability, and, in the absence thereof, such liability could not be successfully asserted against them in any tribunal whatsoever.

This was the principle of decision applied by the Court of Appeals of the First Circuit in one of these same cases growing out of the same insolvency and based on the same laws, in Hale vs. Hardon, 95 Fed. Rep. 447, wherefrom we excerpt at some length:

"The ascertainment of the debts and assets of the corporation and the judgments against the resident stockholders in the parent forum are in no sense personal judgments against the non-resident stockholders, but are necessary preliminaries to a recovery in an extra-territorial proceeding against the non-resident stockholders. To enforce extra-territorially the individual stockholder liability created by statute, and to entitle the creditors, or the parties representing them, to judgment, it is incumbent upon plaintiffs to show that the ascertainments intended by the statute have been made. * * * But such constitutional and statutory liability in contemplation of law is conditioned upon certain equitable proceedings, which, speaking generally, mean proceedings to ascertain all the indebtedness, property and assets of the corporation, to pay out of the assets, if possible, and if not pos-

sible, to pay all, to ascertain how far the assets will go, and the relation which the remaining indebtedness sustains to the maximum liability limit of the stockholders, or perhaps of all solvent stockholders. And in order to recover upon the liability it must be shown that the contemplated statutory condition has been performed. * * * * As to these ascertainments in which the corporation is interested, in a proceeding in which the corporation or its successor is a party and for such purposes representing the stockholder, who is a part of the corporation, the stockholder is bound by the adjudications in Minnesota. * * * * The Minnesota law was a part of the contract which resulted from the defendant becoming a stockholder, and as a stockholder he is bound by such equitable and legal proceedings in the local courts, and such ascertainments as to purely corporate matters as the statute contemplated. As a part of the implied contract, the stockholder agreed that the ascertainments, which the statute intended and which the situation resulting from insolvency required, should be made in accordance with the usual and ordinary course of legal and equitable procedure in that state. It was not understood that the statutory liability should have no force unless the non-resident stockholder was made a party to the proceedings as to corporate affairs which the statute intended and expressly provided should be had in the District Courts of Minnesota. Making a non-resident stockholder a party to the contemplated legal and equitable proceeding for such purposes was a thing impossible, and a construction requiring it would render the statutory liability inoperative at its inception. * * * * We have no hesitation in holding that the findings and decree of the Minnesota court as to the amount of corporate indebtedness, and the amount of indebtedness proven or established in the parent proceeding, and that the findings and decree as to the rights of the creditors are evidence in the proceeding at bar against a stockholder, although no service was made upon him, or notice given of the proceeding in Minnesota; and we have no hesitation in saying that the doctrine is established upon principle and by an overwhelming weight of authority (which, among other considerations, involves the idea of the constitutional guaranty that full force and credit shall be given to the judicial proceedings of every state, and also of enforcement according to the law of the home forum), that such findings, judgments and decrees are conclusive, in the absence of fraud or collusion.

* * * * The fact was also found below that the defendant was a stockholder at the date of the adjudication of the insolvency of the corporation; and as our conclusion is that the proceedings in Minnesota were sufficiently comprehensive as to domiciliary adjudications and ascertainments, and such as the constitution and statutes of Minnesota contemplated, and such as the statutes required, it follows that the defendant's liability results by force of the constitutional provision and the statutes in respect to which he, by implication, contracted by becoming a stockholder,

and that the plaintiff is entitled to recover, provided he is entitled to maintain his action in this jurisdiction as a receiver, or representative of the creditor interests in aid of the parent proceeding in Minnesota."

One of the most comprehensive statements of the rule is found in a recent decision of the Supreme Court of Massachusetts in Howarth vs. Lombard, 175 Mass., 570, wherein the court say:

"In the case at bar a receiver of the Traders' Bank has been appointed, the amount of its assets and liabilities has been judicially determined, the necessity for an assessment upon stockholders, and the amount of the required assessment have been ascertained, an assessment upon all stockholders has been made. * * * * The question arises, how far these proceedings in the Court of Washington are binding on the defendant. The stockholders must be assumed to have understood the statute from the first, as it has been construed by the court. They must be presumed to have agreed that on the insolvency of the corporation a receiver might be appointed by the court, and the affairs of the corporation administered, and the amount of its assets and liabilities determined, and the deficiency ascertained under the order of the court, and an assessment to meet this deficiency made ratably upon all who were then stockholders. This is the only proper way of accomplishing the object of the statute, and the statute, as construed by the local courts, means this as plainly as if every part were expressed. Under the statutes the stockholders impliedly agreed that if their subscriptions were in part unpaid when they were needed for creditors, they would pay the balance to the corporation or its legal representative, and that if more was needed they would also pay their proper share, up to the amount of their subscriptions, to the trustee of this additional fund, for the benefit of creditors. The determination of the questions involved is a part of the proceedings of the court in the administration of the affairs of a local insolvent corporation. The Court of Washington, acting under its general authority in such administration, is the only tribunal which has jurisdiction to determine the amounts due creditors, and to collect and apply the assets of the corporation. The undertaking of the stockholders relates directly to the payment of amounts so to be ascertained. The ascertainment is like a common case of a judgment against a corporation, which is binding on stockholders. The members of such corporations, as well as the corporations themselves, are within the jurisdiction of the local courts, so far as is necessary for the determination of the rights and liabilities of the corporation and its members among themselves. In reference to this kind of liability, such decisions and orders are binding on stockholders who are not before the court otherwise than by their membership in the corporation."

These principles are fully recognized by the Supreme Court of Minnesota in Hanson vs. Davidson, supra, wherein the purposes of the statute and the effect of the proceedings on stockholders is thus stated:

"Equitable considerations and the statute require that an action of the character prescribed by chapter 76 be brought by and on behalf of all the creditors, and against the corporation and all the stockholders of whom the court has jurisdiction, to determine the amount remaining due to such creditors, respectively, after the assets of the corporation have been exhausted; thereby providing a basis for determining the extent of the liability of the respective stockholders. The judgment in such original action determining the amount of the corporate debts remaining unpaid is binding on all of the stockholders, whether parties to the action or not, unless impeached for fraud. A judgment against the corporation is in effect a judgment against the stockholders in their corporate capacity. They are represented by the corporation in this action. In principle, there can be no difference in this respect between an action to enforce an unpaid subscription, and one to enforce a stockholder's liability. The action required to be brought by chapter 76 is the original action for the sequestration and distribution of the fund to be derived from the stockholder's liability, and the decree entered therein is a final and conclusive determination of the amount (unless impeached for fraud) for which the stockholders are liable, not exceeding the maximum limit of liabilities as fixed by law. As the amount and par value of the stock issued and outstanding is a matter of record, and readily proven in any action, there is nothing to prevent the prosecution, after such decree is entered, of an ancillary action in another jurisdiction by the receiver appointed to collect and distribute its funds arising from stockholders' liability in the original action, or by any other party or person who may be appointed by the court for that purpose, against any stockholder who was not made a party to the original action, to collect from him the amount of his liability on account of the debts of the corporation, for the benefit of all the creditors."

The purposes of the statute and the effect of the contract therein involved might be sufficiently rested upon the decision last referred to, in view of the familiar principle that the construction by local courts of their own statutes is to all practical intents and purposes conclusive.

As said by the Supreme Court of Maine, in a recent decision involving these same statutes and the enforcement of a liability similar to that at bar, referring to and citing Hanson vs. Davidson, supra:

"In considering the scope and purpose of a statute, regard is properly had in the first instance to the construction placed upon

it by the courts of the state in which it was enacted, this being deemed a part of the law itself."

Childs vs. Cleves, 95 Me. 498.

The case of Childs vs. Cleves, supra, involved practically the same questions presented by the case at bar, except that in that case the liability involved, instead of being predicated of the general constitutional provision, was based on statutes of the State of Minnesota, specially applicable to stockholders in banking institutions.

The remedial statutes and method of enforcement of the liability, so far as affected by the Minnesota laws, is identical with the case at bar and the principles involved the same. In that case the court say:

"The defendant claims that the proceedings under the Minnesota statute, instituted by the creditors, and which form a basis of this action, were essentially an action against the stockholders to enforce their individual liability and not an action against the corporation, and therefore *res inter alios* and of no effect against this defendant, a non-resident stockholder, who did not become a party to the action. This question has been the subject of frequent examination in recent years, in both the Federal and State Courts, and the great weight of authority in both jurisdictions is undoubtedly against the defendant's contention."

After referring to the general rule quoted, supra, as to the effect of the local decisions as regards local statutes, and citing Hanson vs. Davidson, supra, and other Minnesota cases, the court continued:

"But the principle that the corporation represents stockholders, and that a judgment against the corporation is conclusive against the stockholders, with respect to corporate matters, may properly be termed familiar and well settled. It is established beyond question by both state and federal authority."

Similarly see Tompkins vs. Blakey, 49 Atl. Rep. 111.

These precedents are sufficiently decisive of the effect of the remedial laws, so termed, on the stockholders' contract and establish the finality of the proceedings and ascertainments of the courts of the domicil upon contractual principles.

Before leaving this branch of the case, it may serve to elucidate the propositions involved to explain and answer some of the theories advanced in opposition to the principles thus stated.

IV.

OPPOSING THEORIES.

Much needless argument has been resorted to in this class of cases, questioning the finality of the proceedings of the courts of corporate domicil as against non-resident stockholders. The "want of due process of law" theory has in the development of the law successively assailed proceedings against stockholders of national banks based on the comptroller's assessment, those for the recovery of unpaid capital based on the assessment of the court of principal jurisdiction, and those brought to recover the superadded stock liability, where the same is predicated of a local judgment.

This supposed defense has been effectually disposed of by the well settled principal that "a stockholder is so far an integral part of the corporation, that, in view of the law, he is privy to the proceedings touching the body of which he is a member."

Hawkins vs. Glenn, 131 U. S. 329;
Glenn vs. Liggett, 135 U. S. 544;
Sheafe vs. Larrimer, 79 Fed. Rep. 923;
Lehman vs. Glenn, 27 Ala., 626;
Semple vs. Glenn, 91 Ala. 253;
Great Western Telegraph Co. vs. Gray, 122 Ill. 638;
Van Derwerken vs. Glenn, 85 Va. 12.

In these cases, class by class the fallacy of "due process" has been disposed of until it has taken its final desperate stand in cases similar to that at bar.

In the history and development of the general principles noted above, as the various classes of cases have successively arisen, each has found some supposed technical distinction, rendering the principles referred to inapplicable.

But the claimed distinctions which seek to deny the application of the settled principles do not exist, and the same reasons which have actuated the courts in the others may be safely relied on here.

Bearing in mind the stockholders' contract, if the terms of that contract provided that the necessity for and amount in which the

stock liability should be enforced, should be determined in a given manner, he is bound by that condition, and upon its performance he must respond accordingly. The fact that the condition was the finding of a court is wholly immaterial. It would have been precisely the same had the designated tribunal been some ministerial officer.

It is not, therefore, a question of *due process of law* at all, but whether the prescribed conditions, upon which the stockholder expressly assumed liability, exist.

It has, however, in seeming inability to grasp basic principles and to comprehend the reasons underlying the development of the law in this class of cases, been strenuously asserted that the courts have never gone further than to hold the stockholder bound by matters relating to what are termed "corporate rights or duties."

From this it has been argued that, as this liability is in nowise related to a corporate duty but is exclusively a matter between stockholders and creditors, the principles applied in analogous cases are inapplicable here.

This reasoning is purest sophistry, and evinces a disposition to beg the question.

How can the court bind the absent stockholder in matters respecting "corporate duties," whatever this term may mean Simply because such power was reserved to the state by virtue of express statute, or the settled principles of equitable administration, in either of which cases it must be held to have been within the contemplation of the stockholder, and as, therefore, a constituent element in his contract.

But it is said, having regard to the settled construction of the Minnesota statutes adopted by its courts, previous to the decision in Hanson vs. Davidson, supra, resident stockholders must be made parties to the suit to enforce the liability, and that, therefore, to hold the non-resident bound by the proceeding, discriminates against him, it makes one remedy, so to speak, as against the resident and another against the non-resident stockholders.

This is the gist of the dissenting opinion in Hale vs. Hardon, supra.

When the non-resident stockholder accepted stock, he voluntarily assumed liability in common with his fellows to the creditors of the corporation in case of insolvency. This liability, common to all, and for the equal benefit of the several creditors, pre-

supposed the necessity of jurisdiction vesting in some tribunal to ascertain the necessity for its realization. The statutes provided what that tribunal should be, and the manner, to wit, by an accounting of debts and assets, in which this necessity should be ascertained.

These things must necessarily be held to have been within his contemplation, and thus within the contract assumed in taking the stock.

It rested with the courts to determine in matters of form how this proceeding should be inaugurated and carried on to best accommodate the ends of convenience and justice. They provided that the stockholders should be brought into the original proceeding. The statutes make no such provision. The court might as well have provided that the suit should, in the first instance, bring in only the corporation and its general receiver, leaving the enforcement as against stockholders to auxiliary proceedings. It saw fit to adopt the former, but its functions were thus in nowise impaired, nor its jurisdiction lessened, so far as the consummation of the purposes of the law was concerned.

The reasoning of the court in the dissenting opinion noted, wholly loses sight of the distinction between ministerial matters of procedure and substantive matters of jurisdiction.

In the matter of form of procedure the courts of that state have adopted rules consonant with and calculated to best subserve the interests of the parties.

In other words, in matter of form, the court has superimposed upon the statutes proceedings constructed along the lines prescribed by rules of equity. The statutes referred to do not undertake to dictate or provide in this respect.

As said by the Supreme Court of Minnesota, in State vs. Bank of New England, 56 N. W. Rep. 575:

"Chapter 76 provides but a mere skeleton of procedure for the action authorized by it. Its provisions are very meagre. * * * * The action is given for a remedy to which the creditor is entitled as a matter of right, and which does not rest in the discretion of the court. It is the duty of the court to make the action effectual and to exercise for that purpose the powers vested in it."

This is true so far as ministerial matters relating to procedure are concerned. It cannot, however, having any regard for the provisions of the statutes themselves, be held or claimed that in substantive matters they fail to invest the court with all the necessary reserved powers and jurisdiction required to be exercised,

to reach every fund available for creditors on the insolvency of the corporation.

By prescribing matters of form, the courts have in nowise limited their statutory jurisdiction or the effect to be accorded the necessary judgments and decrees rendered by them to carry out the obvious intent and purpose of the statutes themselves.

Making resident stockholders parties, in nowise affects the finality of the proceeding as to non-residents.

Thus, as said by Judge Thompson, in Vol. 3, Thompson on Corporations, § 3492, in speaking of the methods of procedure in analagous cases:

"The other is the course suggested by the preceding section, to bring the suit on behalf of the creditors, to procure the appointment of a receiver, to have an account taken and stated, and an assessment upon all the shareholders ordered, and to enforce that assessment by supplementary actions brought by the receiver wherever the shareholders may be found. Where the latter course is taken, no objection is perceived to mingling the two kinds of procedure, so far as to make such stockholders as may be found within the jurisdiction, parties defendant, and to rendering decrees against them *in personam*, without requiring the receiver to bring separate actions at law against them, which practice is sanctioned by the decisions first above cited. This would leave him free to bring actions at law against such stockholders as might reside in other jurisdictions, as was done in the Glenn case."

These conditions presented to the foreign stockholder were fully embodied in the statute. He knew that in impounding the fund to be raised from the stock liability, the court would proceed with his presence, if he saw fit to appear, otherwise without him. If any discrimination resulted, he necessarily, therefore, accepted the same voluntarily in advance.

It has been contended that the holding of the Minnesota court in Hanson vs. Davidson, supra, overruled previous decisions of that state interpreting the same statutes, notably Allen vs. Walsh, 25 Minn. 543, and subsequent cases following.

The decision in Hanson vs. Davidson thus refers to and comments on this case:

"A decision upon this claim of the defendant involves a consideration of the nature of the liability of stockholders for the debts of the corporation, the method of enforcing it, and just what was decided by the case of Allen vs. Walsh. In that case, which was an action at law by a creditor, for his sole and exclusive benefit, against a single stockholder, to enforce his individual liability, it was correctly held that the action could not be maintained, and that the plaintiff's remedy was an equitable action, in

behalf of himself and all other creditors, against the corporation and its stockholders, wherein the debts of the corporation must be determined, and, after exhausting the corporate assets, the liability of stockholders for the deficiency might be adjudicated and enforced pursuant to the provisions of chapter 76, General St. 1878 (chapter 76, Gen. St. 1894). It was not, however, decided in that case that if a stockholder was omitted from such original action because the court could not acquire jurisdiction of him, or for any other cause, the liability could not be subsequently enforced against him by bringing him or his property into the original action, if found within the jurisdiction of the court, or by proceeding against him alone in an action ancillary to the original action in any other jurisdiction where he might be found, if the comity of the sister state would permit it. Neither is there anything in the nature of the stockholders' individual liability, or the method of enforcing it, to prevent the enforcement of the liability against a stockholder so omitted from the original action. The constitution of the state imposes the liability on all corporations, except those organized for carrying on any kind of manufacturing or mechanical business; and it follows that every person who becomes a stockholder in a corporation organized under our laws contracts, with reference thereto, and with the creditors of the corporation, that he will be liable for its debts, to the limit fixed by our constitution and statutes."

The criticisms which have been preferred on Hanson vs. Davidson, wholly lose sight of the fact that that was the first case in which the question of the jurisdiction of the courts of that state, under the statutes thereof, to deal with or effect omitted or non-resident stockholders had ever been called to its attention. In all the several previous decisions the questions presented had been confined to determining (1) Whether the statutes of that state contemplated a several remedy in favor of creditors, to be pursued at law, or a joint right to be availed of in equity, and (2) Questions relating to resident stockholders before the court in the pending proceedings.

In the previous cases of Clark vs. Opera House, 59 N. W. Rep. 623, and Bank vs. Plow Co., 58 Minn. 167, the effect of the omission, insolvency, or non-residence of stockholders, so far as these facts affected the question of amount of liability of stockholders before the court was referred to, but the decisions were expressly confined to the phase thus presented.

In Harper vs. Carroll, 69 N. W. Rep. 610, the court's attention was first called to the effect of local proceedings as releasing stockholders, not made parties thereto, upon the claim that the liability was joint.

Answering this, the court say:

"The stockholders' liability is several, not joint; and a judgment against only a part of the stockholders within the jurisdiction does not have the effect of releasing the others."

In Hanson vs. Davidson, the question was squarely presented upon a state of facts, necessarily demanding the determination of the finality and effect of the proceedings had in the original cause as against an omitted or non-resident stockholder. In that case, after a final decree in the original suit, property belonging to a non-resident stockholder was found within the state and attached in an ancillary proceeding.

It was claimed by the defendant that the liability created by the law of that state was joint, and the rights of creditors merged in the judgment theretofore rendered. The result of this defense has already been indicated in excerpts from the decision.

The criticisms of Hanson vs. Davidson further lose sight of the fact that the construction and interpretation of the jurisdiction of the court of domicil and of the statutes in question, there adopted, is in precise accord with the principles which modern rules and practice of equity have uniformly settled.

In all the various litigation arising upon these statutes, with the exhaustive ingenuity exercised therein for conjuring up technical objections to the enforcement of the right, no claim has ever yet been made that these statutes are, in any substantial particular, inconsistent with the ordinary principles of equity procedure prescribed for rendering the assets and quasi assets of insolvent corporations available for creditors.

As an abstract proposition therefore, it appearing that the liability created by these laws contemplated a fund for creditors equally and in common, the courts of every jurisdiction, having any regard for the obligation of a contract, must of necessity, with or without consideration of these statutes, and with or without regard to the Minnesota precedents, have sanctioned the original proceeding by accounting in the local courts having jurisdiction of the corporation, followed by auxiliary proceedings thereon predicated in the jurisdiction where stockholders reside.

Hawkins vs. Glenn, supra;
Terry vs. Little, supra;
Bank vs. Franklin, supra.

The result of the decisions of the Circuit and Circuit Court of Appeals of the Third Circuit in these cases is substantially as fol-

lows: You cannot proceed by an original bill here, because this court has no jurisdiction of the corporation, an indispensable party to the accounting requisite for the determination of the stockholders' liability; you cannot proceed in an auxiliary suit, because the courts of Minnesota have no jurisdiction to make an accounting and assessment on residents of this state, not before that court; it may be possible that you can find some other remedy, but of that we express no opinion.

By such sophistries one of the most just and equitable forms of stock liability known to the law has been absolutely barred from enforcement in those courts.

Of the liability created by these laws, the Supreme Court of Maine, in the recent case of Childs vs. Cleves, have said as follows:

"The Minnesota statute authorizing the collection from stockholders of only so much as may be necessary to satisfy the debts of the corporation, and requiring a pro rata distribution of it among all the creditors, is seen to be free from the less equitable features of those statutes which authorize a single creditor, without the pro rata assessment, to maintain an action against a single stockholder for his own benefit, and not for the benefit of all the creditors."

The spirit of manifest and technical opposition indicated by the decisions of the court in the circuit in question stands out in marked contrast with the holding of the Supreme Court of Massachusetts in Bank vs. Ellis, 172 Mass. 47, quoted and approved by the Supreme Court of Maine in Childs vs. Cleves, supra, as follows:

"It certainly concerns the due administration of justice that all stockholders, wherever they reside, should be compelled by proceedings somewhere, to perform the statutory obligations towards creditors of the corporation which they have assumed by becoming stockholders."

Under the most varied provisions of statutory liability and providing diversified remedies for their enforcement, the great and almost uniform holding of the later precedents recognizes the right of enforcement in foreign tribunals.

In addition to cases cited, supra, see

Sheafe vs. Larimer, 79 Fed. Rep. 921;
Howarth vs. Ellwanger, 86 Fed. Rep. 54;
Bank vs. Ellis, 166 Mass. 418;
Howarth vs. Angle, 162 N. Y. 179;
Ferguson vs. Sherman, 116 Cal. 175;
Bank vs. Lawrence, 117 Mich. 673;
Bell vs. Farwell, 176 Ill. 498;

Aldrich vs. Anchor Coal Co., 24 Oregon 39;
Hall vs. Klunk, 25 S. C. 352;
Guerney vs. Moore, 131 Mo. 650;
Cushing vs. Perot, 175 Pa. 66.

The principles thus established may in conclusion be stated as follows.

The power reserved to the state, by virtue of these statutory provisions, and the right to render available the fund in the manner and through the agencies designated, is an essential and substantive condition attached by the state to its grant, and as such is as much a part of the stockholders' undertaking as the condition involved in the statute or constitutional provision imposing the liability. It rested exclusively with the state to determine these conditions. It might have provided with equal force and effect that the liability should be primary, and, as such, a part and parcel of the corporate assets; it might have provided that the fund should be secondary, but still available in the general insolvency proceedings on *ex parte* application, and assessment so termed by the court, to be sued for and recovered by the corporate receiver. It might have delegated the functions necessary to be exercised in determining the conditions upon which, and the amount in which, the fund should be made available, to some ministerial officer, as has been done by the federal statutes in the case of national banks. The material point is not the particular manner or method prescribed, for that was wholly discretionary in the state, but the fact that it has prescribed *the conditions upon which, and the agency through which*, the necessity for and amount in which this fund is to be made available, should be determined.

Having done this, the conditions and the agency designated are stipulated and agreed upon as between the state, the stockholder and creditor in advance. These are the determinative conditions of the stockholders' undertaking, without which it is arbitrary, meaningless and devoid of potency.

V.

DENIAL OF DUE FAITH AND CREDIT TO THE JUDICIAL PROCEEDINGS OF THE STATE OF MINNESOTA.

Within the principles announced by this court in Hancock National Bank vs. Farnham, 176 U. S. 640, the denial of the efficacy to the proceedings of the Minnesota court was a denial of "due faith and credit" within the inhibition of Section 1, Article 4, of the Constitution of the United States.

As heretofore shown under the decisions of the courts of the State of Minnesota, the decree determining the necessity for and amount in which all stockholders shall be assessed, is conclusive and binding in the absence of fraud on all stockholders, whether before the court or not.

This being the interpretation of the effect of its own decree within that state, it was under the principles announced by this court in the case cited, entitled to the same effect, and subject to be met only by the same defenses, as would be available against it in the State of Minnesota.

See also Great Western Telegraph Co. vs. Purdy, 162 U. S. 329.

As the effect of this decree will call for examination when we come to the question of jurisdiction, we reserve its further consideration to that place.

VI.

CAPACITY OF PETITIONER TO SUE.

Underlying the modern precedents heretofore considered, will have already been observed the one essential element of uniformity in the matter of enforcement of these liabilities.

Without violating the law of the forum, manifest regard has been paid the spirit and purpose of the domiciliary law, and that

remedy sustained for the latter's enforcement, which harmonized with its spirit and insured equality of administration.

It has long been recognized that where such liability contemplates the creation of a fund, the purposes in this regard may be best accomplished through the medium of a receiver.

Vol. 2, Mor. on Corp., § 902.

In some jurisdictions the administration of this quasi asset is conferred upon the general receiver of the corporation, but by the clear weight of authority, unless power in this respect be conferred by special enactment, the general receiver has no interest in the right in question.

Ochiltree vs. Railway, 21 Wall. 249;
Vol. 2, Cook on Stocks & Stockholders, § 218;
Vol. 2, Mor. on Corp., § 849;
Gluck & Becker, Rec. (2nd Ed.), 266;
Bank vs. Ellis (Mass.), supra;

The laws of Minnesota provide in such cases for the appointment of a special receiver as representative of creditors in respect to this special liability.

Hale vs. Hardon, supra;
Childs vs. Cleves, supra;
Hanson vs. Davidson, supra;

This is the status of petitioner under a decree of the domiciliary court authorizing and directing the enforcement of the liability.

At the threshold of the present case, petitioner has been met with the stereotyped objection that as a foreign receiver he could not be accorded standing in any jurisdiction outside that of his appointment.

The foundation for the supposed rule denying extra-territorial rights to a foreign receiver, statutory or judicial, has been in the earlier cases referred to two propositions, (1) A disinclination to accord force and effect either to foreign laws or judicial proceedings, and (2) A tendency of discrimination in favor of the citizens of the state of forum.

The early case of Booth vs. Clark, 17 How. 322, has been frequently cited as justifying one or both the grounds stated. Assuming without conceding, that there is any foundation for attempting to extend the principles announced in that case, confined

as it was to the rights of individuals and invoking the aid of a court of equity with the appointment of a receiver for the adjustment of such rights, to the case of a corporation, which is created by law and subject to all the several conditions imposed by law, including those relating to the administration of its affairs in case of insolvency, it is nevertheless confidently asserted that the basis of decision in Booth vs. Clark, predicated as was that case of a denial of all comity between the states, has been so far removed by the now thoroughly established doctrines of comity sustained by nearly every state in the Union, as to deprive the conclusions there announced of the force otherwise attributable thereto.

The underlying principle of that case is apparent from the following excerpt therefrom:

"That comity has not yet reached our courts. * * * * Such being the rule in the American courts in respect to foreign assignments in bankruptcy and in respect to such assignments as may be made under the insolvent laws of the states of the United States, there can be no good reason for giving to a receiver appointed in one of the states under a creditor's bill a larger comity in the courts of the United States or in those of the states or territories."

If the principle of comity is decisive and controlling in this regard, the question must of necessity be one of local law, referable to the policy of the state of the forum, as indicated either in its legislative enactments or judicial decisions.

This view was indicated by this court in Cole vs. Cunningham, 133 U. S. 107, 126, and Reynolds vs. Alden, 136 U. S. 348.

But whether referable to local or conceived general rules, it must now be conceded that, by the almost unanimous concensus of opinion, subject to certain well recognized exceptions, foreign standing is accorded statutory receivers, and it is believed that no substantial grounds now exist for denying similar standing to receivers appointed by courts of equity.

This conclusion is clearly indicated by the later decision of this court in Davis vs. Gray, 16 Wall. 203 219, as follows:

"In the progress and growth of equity jurisdiction, it has become usual to clothe such officer with much larger powers than were formerly conferred. In some of the states they are by statutes charged with the duty of settling the affairs of certain corporations when insolvent, and are authorized expressly to sue in their own names. * * * * In all such cases the receiver is the right arm of the jurisdiction invoked. As regards the statutes, we see no reason why a court of equity in the exercise of its

undoubted authority may not accomplish all the best results intended to be secured by such legislation without its aid."

The modern rule sustained by the great weight of authority and applicable in this regard, indiscriminately to statutory as well as receivers of courts of equity, has been thus expressed:

"The great weight of authority in this country at the present time may be stated in general terms as follows:

"First—The receiver, as a strict matter of right, by leave of court, may sue and defend in all courts of the state where he is appointed.

"Second—He will be permitted to sue and defend, as foreign receiver, in all courts of other states than that in which he is appointed, on the principles of comity, except where the rights of citizens of the state of the forum are prejudiced thereby, or where it would be in contravention of the policy of such state."

Smith on Receiverships, 167 (f), and cases.

See also,

2 Beach Mod. Eq. Pr., § 747;
Beach on Rec., § 682;
High on Rec. (2nd Ed.), § 241;
Gluck & Becker on Rec. (2nd Ed.), 34 *et seq.*, 222;
Vol. 20, Am. & Eng. Ency. of Law, 244.

That the general rule of comity prevails in the Commonwealth of Pennsylvania is settled by Bagby vs. Railway, 86 Pa. St., 291; that the demand asserted is not opposed to any policy of the local law of that Commonwealth is sufficiently indicated by

Aultman's Appeal, 98 Pa. 505;
Cushing vs. Perrot, 175 Pa. 66.

With a view of bringing this case within the exception to the general rule stated, it was asserted in the demurrers that the bill and exhibits disclosed that there were local creditors to whose demands the liabilities of the defendants should primarily respond.

In the light of established principles this claim is utterly futile. Neither local creditors nor any other creditors may avail themselves of this liability or assert any rights whatsoever therein, otherwise than on full compliance with the several conditions of the law of the domicil.

Terry vs. Little, 101 U. S. 216.

The rights of creditors in this fund are not attributable to any remedial laws of the Commonwealth of Pennsylvania. Local

creditors have no other or different rights than any others, and all are referable in this regard to the laws of the domicil prescribing equality for creditors in common.

As well said in this regard by the Supreme Court of Maine, in Childs vs. Cleves, supra:

"It is apparent that no rights of domestic creditors can intervene, since the law creating the stockholders' liability declares it shall be enforced for the benefit of all creditors of the corporation."

The receiver appointed for this special fund and to render that fund available, obviously bears the same relation thereto as the receiver of the corporation to the general assets and properties of the body corporate, subject to his administration. The purpose of such receiver is obviously a matter of necessity as well as convenience, and the power of appointment may be referred both to the express provisions of the Minnesota statutes and the general equity powers exercised by courts of chancery in analagous cases.

Hale vs. Hardon, supra;
Childs vs. Cleves, supra;
Zieverink vs. Kemper (Ohio), 34 N. E. Rep. 250.

Such an appointment is obviously calculated to effectuate the general objects and purposes, in that without it, no practical means has ever yet been suggested for insuring harmony in the administration and efficiency in the proceedings contemplated.

The Supreme Court of Maine, in Childs vs. Cleves, supra, said in this regard:

"The practical result would be that, unless the plaintiff receiver appointed by the court under authority of the statute for the express purpose of 'instituting all necessary actions and proceedings for the purpose of collecting from non-resident stockholders' any sums due for the benefit of all creditors can be permitted to maintain a suit for that purpose in extra-territorial jurisdictions, upon the principle of comity, or otherwise, the remedy provided by the statute would be a barren and inoperative one except as against the stockholders in Minnesota; and while non-resident stockholders would thus have the right to share in all the profits of a successful enterprise, they could not be compelled to fulfill their promises to creditors in the case of a losing one."

If we assume, as we must, that the liability is enforceable in any and every jurisdiction, what reason is there for denying recognition to the receiver appointed for that purpose who brings forward in his person the claims of all the several creditors in inter-

est? To compel those creditors to join in such a proceeding as parties plaintiff, would be an obvious inconvenience without corresponding benefit or advantage to any one. Their claims are not the subject of reconsideration or review, for, under the doctrines heretofore referred to, their judgments are conclusive. The only parties in interest, as shown by the decision in Hale vs. Hardon, supra, are the creditors to the original proceeding, who have conformed to the requirements of the local law. These creditors, being parties to that proceeding, are bound by the decree vesting their rights in the premises in a receiver.

High on Rec., § 37.

A payment to that receiver unquestionably relieves the stockholder from any further liability.

Castleman vs. Templeman (Md.), 41 L. R. A. 367-369.

Upon general principles, therefore, nothing except the most technical reasons, and those devoid of any substance whatsoever, can be successfully urged against the right of the present receiver to maintain the suit in question, and this, whether he be termed a statutory or a receiver of a court of equity.

But another and all-sufficient reason for recognizing, not alone the standing, but the absolute right of the receiver in question may be found in the case at bar. It has been heretofore shown that the statutes expressly provide for the appointment of a receiver by the court as an incident to the administration of the fund. In this view the receiver may not inaptly be termed one of the statutory agencies, provided by the laws of the domicil, in case of the insolvency of the corporation. It is immaterial in this regard whether this agency be committed to a specially designated official or generally to a person to be designated by an appropriate court for the purposes contemplated.

In Relfe vs. Rundle, 103 U. S. 222, the laws of the State of Missouri provided that, in case of the insolvency of a corporation of that state, a designated state official should succeed to the rights and interests of the company, for the purpose of winding up its affairs, and it was held by the Supreme Court that such agency was a part of the contract with the state, binding alike upon the corporation and its constituent members.

In Parsons vs. Charter Oak Life Insurance Co., 31 Fed. Rep. 305, 309, the laws of the State of Connecticut provided that in case of corporate insolvency the courts of that state, upon application of

a designated official, should cause a receiver to be appointed, and it was held that the person thus designated by the court was as much a statutory agent of the state as though specifically indicated by the statute in the first instance.

In the case first cited, this court said:

"We are aware that, except by virtue of some statutory authority, an administrator appointed in one state cannot generally sue in another, and that a receiver appointed by a state court has no extra-territorial power; but a corporation is the creature of legislation, and may be endowed with such powers as its creator sees fit to give. Necessarily, it must act through agents, and the state which creates it may say who those agents shall be. * * * * The appellees, when they contracted with the Missouri corporation, impliedly agreed that if the contract was dissolved, under the Missouri laws, the superintendent of the insurance department of the state should represent the company in all suits instituted by them affecting the winding up of its affairs."

No sound rule or reason can be advanced denying the right of a state, by appropriate legislation, to subdivide these so-termed corporate agencies in cases of insolvency as it may see fit. If, by such legislation, the administration of one part of the entire fund available, in case of insolvency, is committed to one, and another to another, agency, this is mere matter of legislative expediency.

The authority of the state is unquestioned, and the result, both as respects the character of the agency itself, and the implied assent thereto by the stockholders, must, of necessity, be the same. This is the principle of decision applied by the Court of Appeals of the First Circuit in Hale vs. Hardon, supra, fully sustaining the right of the plaintiff to sue in a foreign jurisdiction, wherefrom we excerpt as follows:

"The plaintiff is not a common law receiver representing the interest of all the parties; he is not a statutory receiver by express personal or official designation, as in Relfe vs. Rundle, supra; he is not a receiver who has leave to sue; but he is a receiver appointed by the court, under an express statutory provision, and an imperative requirement that the courts shall appoint, and is exercising the functions which the law-making power intended he should exercise, and is exercising such power under the authority of the statute conferred by the court, not by law, as in the other class of cases, but by express authority and direction, which charge him with the specific duty. It being the statutory intent to have the separate and distinct interests of the creditors against stockholders represented by a separate and distinct statutory agency, an express provision 'that the court shall appoint one or more receivers for the interest of the corporation, and a separate

receiver for such interests of the creditors,' would have meant no more than the provision actually employed that 'the court * * * * shall appoint one or more receivers' means under fair and reasonable intendment."

And on page 775:

"Whether a receiver shall or shall not maintain an action extra-territorially is not a question of absolute right. A receiver does not possess the absolute right to sue in a foreign jurisdiction. Neither does an absolute right exist on behalf of a defendant that he shall not sue. Under our system of territorial and state divisions, and the resulting quasi independent judicial systems, there is and can be no imperative and absolute right on the subject. If this action at law is maintained, extra-territorially in favor of a receiver, in aid of a parent proceeding in Minnesota, it is upon wholesome grounds of public policy, and of justice and comity.

"* * * * As such rule would operate in the direction of right and equity and in the direction of convenience, and would effectuate the purposes of justice, we think it should be held to exist as an inherent necessity in our system of government."

See also,

Howarth vs. Angle, 162 N. Y. 179;

Tompkins vs. Blakey, 49 Atl. Rep. 111;

Howarth vs. Lombard, 175 Mass. 570.

In Childs vs. Cleves, 95 Me., supra, the same conclusion was announced by the Supreme Court of Maine in reference to a receiver similarly appointed under the statutes of Minnesota, in a suit brought for the enforcement of the liability of stockholders.

Upon this point the court say as follows:

"But it is insisted, in behalf of the defendant, that as plaintiff receiver is not vested with any of the rights or assets of the corporation, he is not entitled to maintain a suit against a stockholder in another jurisdiction. It is contended that his official character is not essentially different from that of an ordinary master in chancery, appointed as the hand of the court to render incidental aid in the litigation. * * * *

"Here, again, we should look to the decisions of the Minnesota courts for some declaration of the true purpose and policy of the legislature in enacting this statute. In the first place, as has already appeared, it has been held repeatedly in that state that this constitutional or statutory liability of the stockholders is a liability to the creditors. It forms no part of the assets of the corporation, and it cannot be enforced by the corporation. Hence it is obvious that the receiver originally appointed in this case to receive and distribute the existing assets of the bank, unless expressly authorized by the statute, would have no authority to en-

force the individual liability of stockholders for the purpose of paying the debts of the corporation (*In re* Peoples Live Stock Ins. Co., 56 Minn. 180; Olson vs. Cook, 57 Minn. 552, supra). And inasmuch as the general scheme of liquidation devised by the Minnesota statute requires an accounting and a pro rata distribution among all the creditors, it follows that individual creditors could not maintain an action under this statute against an individual stockholder, either in Minnesota or elsewhere. * * * *

"In Relfe vs. Rundle, 103 U. S., supra, the statute made an official designation of the insurance superintendent as the receiver or trustee, and the power of appointing that officer was intrusted to the executive. * * * * In neither case does the statute make a personal selection of the receiver; and no essential difference in principle can be suggested between the receiver in Relfe vs. Rundle, supra, and the receiver in the case at bar, respecting the capacity to sue in a foreign jurisdiction."

In the interpretation and development of the contractural features which have always seemed to the writer hereof to lie at the foundation of all the several questions presented in this class of cases, we have heretofore argued that this question of the right of a receiver to sue could be similarly ascribed to the express contract of the stockholder whereby there was promised to be paid, in the event of the corporation's insolvency, to the creditors or the party designated by the court for that purpose, the amount of the ascertained contribution.

In this view, and assuming its correctness, the receiver, upon the happening of the specified contingency, became a substituted promisee, and asserted the obligation as a matter of right and as running to himself directly.

Since the original presentation of this theory the Supreme Court of Connecticut, in the recent case of Fish vs. Smith, 47 Atl. Rep. 711, 713, have advanced the principle as applicable and governing the right of a receiver as respects unpaid capital as follows:

"The defendant by his contract of membership came into the obligation to respond to any demand that might thus be made by the proper court in Minnesota. There the corporation was created. There is was subject to the jurisdiction of the courts. There, should it be insolvent, its affairs would be wound up by judicial proceedings. His obligation to pay the balance due upon his shares was a conditional one. * * * * The law of Minnesota had provided for such a contingency. It had armed, in that case, one of its courts with power to appoint a receiver and required payment to be made to him. This law entered into the obligation of the defendant's contract. The call made under it converted that obligation from a conditional one into an absolute one and made the receiver the party to whom its performance was

due. * * * * In legal effect then part of the obligation assumed by the defendant was that, in case of its insolvency, before he had been called upon to pay the balance due upon his shares, he would pay it, should it be needed to satisfy creditors, to a receiver duly appointed in Minnesota. * * * * Having promised, in legal contemplation, to pay the sum now in question, to any receiver properly appointed, the plaintiff was entitled to bring suit on this contract in any state where the defendant might reside. His action was founded, not on the right of a foreign receiver to sue upon demands in favor of the party he may represent, but on the right of a substituted promisee to sue a promisor whose contract provided for such substitution."

Whether, therefore, this question be considered in the light of modern law, according standing on principles of comity to the administrative officers of corporations of foreign states, or upon the theory of express statutory agency with the succession therein involved, or upon what may be termed the strict contractual feature of promise by substitution, the right of the receiver in any event is fully sustained.

VI.

JURISDICTION IN EQUITY.

The present bill, as heretofore stated, was filed by petitioner against the several stockholders resident in the Commonwealth of Pennsylvania, to compel their contribution to the amount provided by the Minnesota laws and ascertained by the decree of the Minnesota court.

The right to invoke the jurisdiction of a court of equity may be considered under the three heads assigned in the specifications of error below and here.

First—The right asserted was equitable in character.

Second—The bill was filed in aid of and to enforce the decree of another court of chancery.

Third—That jurisdiction may be sustained on the ground of avoiding a multiplicity of suits.

These several grounds will be considered in their order.

(a) CHARACTER OF THE RIGHT INVOLVED.

Under all the several authorities to which the attention of this court has been called above, the nature and character of a stock liability imposed by the statutes of a state is determined by the local laws, and is legal or equitable accordingly.

This principle was adverted to by this court in Fourth National Bank vs. Franklin, 120 U. S. 747, 756, in the following language:

"The question whether the remedy in the Federal Court should be by action at law or by suit in equity, depends upon the nature of the remedy given by the statutes of the state."

See also,

McVicker vs. Jones, 70 Fed. Rep. 754;

Bank vs. Rindge, 57 Fed. Rep. 279.

It follows as a necessary consequence from the established rule, that the remedial statutes of the domicil may qualify the right thereby created, that the character of that right is established by those laws, and that such character follows it in every jurisdiction where it may be asserted.

Terry vs. Little, supra.

Applying the principles announced by this court in Flash vs. Conn, supra, to the effect that a uniform construction must be adopted for the local law in every jurisdiction, and that this court will not construe such statutes in a different manner in a case coming from Pennsylvania, from what it would in a case originating in Minnesota, it must be conceded that under those statutes, both by force of their express provisions and as interpreted by the highest courts of that state, the right of the creditors in and to the fund contemplated from the stock liability is equitable in character.

This result arises not alone by virtue of the fact that the machinery of a court of equity is necessary to render the fund available, but equally from the inherent nature of the right itself and the relation of the parties. No creditor has, or ever had, a *legal* right against any stockholder by force of the constating statutes in question.

As said by this court in Terry vs. Little, supra, "The liability of the stockholders is not to any individual creditor, but for contribution to a fund."

And again in Patterson vs. Lynde, 106 U. S. 519, 521, "the liability is not to the creditors but for the debts."

The nature of the right, for purposes of determining whether it is legal or equitable, is not to be confused with the provisions of the remedy by which it may be made available. So far as the latter qualifies the right, as heretofore stated, it enters into the right itself.

The right arose from the contract between the parties, and existed from the time that the stockholder acquired his stock or the creditor his obligation, although occasion for its exercise or enforcement may not have arisen until later.

This right was the same as to every stockholder and every creditor in every jurisdiction, and has not and could not be modified in its intrinsic features by any subsequent proceedings whatsoever.

The performance by the courts of the domicil of the several offices contemplated by the local law have served to measure the amount in which the right may be made available, but the obligation of the stockholder remains as before, to contribute to the fund, and the right of the creditor similarly remains to participate in that fund.

It was insisted by the appellees in the lower court that, assuming the allegations of petitioner's bill to be true, and that the Minnesota proceedings were to be accorded the effect claimed, the result was that the ordinary relation of debtor and creditor existed, and that there was nothing left for the stockholder but to pay the amount of his liability or say that that liability had been already paid, or that he was not in fact a holder of stock.

If this were true it would not necessarily militate against the right to invoke the jurisdiction of a court of equity for reasons hereinafter stated, but it is not and cannot be true, unless it first be established to the satisfaction of the court that the original relation between creditor and stockholder, as provided by the laws in question, has been changed by force of the Minnesota decree.

It was further urged below that upon the allegations of the bill, the situation presented was identical with that existing after an assessment by the court for unpaid capital.

This reasoning loses sight of the obvious distinction between the contractual relations which give rise respectively to these separate obligations. The obligation of the stockholder to the extent of the amount remaining due and unpaid upon his stock is clearly legal.

Sanger vs. Upton, 91 U. S. 56, 62.

The corporation may recover this liability as any other debt due and owing to itself, and the receiver or assignee succeeding to the rights of the corporation in this respect becomes the assignee of a legal chose in action.

Sanger vs. Upton, supra.

In proceedings by the assignee or receiver in such cases, after assessment by the court, the right remains as in its inception, and the effect of the assessment is merely to measure the amount in which that legal right shall be enforced.

Under the laws to which the rights of the respective parties are ascribable in the case at bar, no such legal right ever arose. The only obligation was solely ascribable to the local law, which, as heretofore stated, created the privilege upon the part of the creditor to participate in, and the obligation of the stockholders to contribute to, the fund contemplated from the statutory liability.

Appellees claimed in the court below that the nature of the right asserted was to be determined exclusively with reference to the allegations of the bill, and this is true with the qualification that the allegations themselves are to be interpreted with reference to the local law to which the rights therein alleged are referable, and of which this court will take judicial cognizance.

Bank vs. Franklin, supra.

It was further contended below that upon the allegations of the bill and the law relating thereto, as interpreted by petitioner, there were no offices for a court of equity to perform in the present proceeding, and that the sole relief consisted in a decree for the payment of money. This may or may not be true, according as the grounds of jurisdiction hereafter considered are held available or not.

The claim, however, overlooks the essential jurisdictional feature, viz.: that, given an equitable right, jurisdiction of a court of equity may always be invoked, and this is without regard to the nature of the relief demanded, whether legal, equitable or partaking in a measure of both.

Vol. 1, Pom. Eq. Jur., 97, 137.

It was further contended below that by the present bill petitioner sought to unite in one proceeding a large number of several and distinct actions, wherein no one of the defendants had any interest in the controversy of any other, etc. Had these defend-

ant stockholders resided within the jurisdiction of the courts of corporate domicile, they would have been brought into a single action in those courts in which the amounts of their several contributions would have been ascertained. Had they been omitted from the original action and subsequently been found within the jurisdiction of the court, the proceedings would have been opened, and they brought in to respond to the amount of their ascertained contributions for the creditors.

Hanson vs. Davidson, supra.

The proceeding here, in its present form, is the nearest approach to that provided by the domiciliary law, and conforms in all respects to the principles frequently adverted to by this court, to the effect that the nature of the remedy given the creditors at home shall determine and characterize that available abroad.

Had the proceedings been instituted by all the creditors in interest, after the Minnesota decree, and in the absence of the appointment of a receiver therein, it would hardly be contended that the proper forum or remedy was at law. In such case a court of equity would unquestionably have held that the obligation asserted, contemplating the creation of a fund, involved an appropriate exercise of its jurisdiction in distributing the same to the parties thereto entitled.

The fact that all the several creditors are brought forward in the person of the receiver, and that the necessity of formally distributing in the forum, is upon principles of comity dispensed with, and the fund derived from the enforcement of the liability permitted to be returned into the courts of the domicile, to be there distributed in common with the remainder derived from all sources whatsoever, in nowise qualifies the case and principle.

In cases of liability arising upon unpaid subscriptions and legal in character, as heretofore stated, it has been repeatedly asserted that the receiver has a choice of remedies, and may avail himself of the independent remedy against stockholders severally, at law, or jointly against all within the reach of process by a bill in equity.

In Sanger vs. Upton, 91 U. S. 56, 62, the suit was brought by an assignee in bankruptcy of a corporation after an assessment made for the entire unpaid balance of the corporate stock.

Speaking of the appropriate remedy, this court said:

"If the company had sued, it might have sued at law. The right of the company passed to the assignee, and he could also enforce

them by a legal remedy. The assignee might have filed a bill in equity against all the delinquent shareholders jointly."

In Vol. 5, Thompson on Corp., § 6962, the author speaking of this same subject says:

"The receiver will bring actions at law against the stockholders severally, to enforce what is due by each, under the order of assessment, or bring an action in equity against all of them collectively, if they reside within the jurisdiction, and if other circumstances exist, making that mode of proceeding convenient."

The same rule is stated in Vol. 1, Morawetz on Corp. (4 Ed.), § 208, and Angel and Ames on Corp., § 626.

In re Crystal Springs Bottling Co., 96 Fed. Rep. 945, after the assessment in the bankruptcy court for the unpaid capital of the bankrupt corporation, it was held that the assignee could file a bill against all the stockholders to recover the same, the court saying:

"According to Patterson vs. Lynde, 106 U. S. 519, there should be one suit in equity for the adjustment of the whole matter as to all within the jurisdiction."

In Stoddard vs. Lum, 159 N. Y. 265, a bill in equity filed by the receiver of an insolvent Illinois corporation against some fifteen or more stockholders thereof, residing in the State of New York, was sustained by the Court of Appeals of that state, the court saying:

"The assignee can maintain in the courts of this state an action in equity against all original stockholders residing here, to enforce their common law, contractual liability to pay the subscription prices of their stock, by compelling them to contribute their pro rata shares of the indebtedness of the corporation after its assets had been exhausted, to the extent of the amounts remaining unpaid upon their stock."

If this alternative of remedies be available, in the case of the clear and indisputable legal liability arising from unpaid subscriptions, much stronger reason obviously exists for asserting the existence of such jurisdiction in the case at bar.

(b) JURISDICTION OF THE BILL AS ONE TO ENFORCE A DECREE.

No question has been or can be made of the chancery jurisdiction in cases where the object of the suit is the enforcement or carrying into effect of the decree of the court itself or other courts of equity.

Story Eq. Pl., §§ 429, 430, 431;
Mitford Eq. Pl., 95;
Cooper Eq. Pl., 98, 99;
2 Beach Mod. Eq. Pr., § 903;
Shainwald vs. Lewis, 69 Fed. Rep. 487, 493, 494.

Upon this claim of jurisdiction it was contended by appellees in the Circuit Court that no jurisdiction existed where the original decree was for the payment of money.

In the Circuit Court of Appeals this claim was abandoned in view of the decision of this court in Shields vs. Thomas, 18 How. 253, 261, 262, wherein the original decree rendered in the state courts of Kentucky was for the payment of money alone and jurisdiction of a bill to enforce the same was sustained in the Circuit Court of the United States for the district of Iowa. In that case this court said:

"The remaining objection arising upon the demurrer, which we deem it necessary to consider, is that urged against the right of the appellees to institute proceedings in equity in the State of Iowa, to enforce the decree rendered in their favor by the court of Kentucky. We can perceive no force in the effort to sustain this objection by citation of the seventh amendment of the Constitution of the United States, which provides 'that in suits at common law, where the value in controversy shall exceed five hundred dollars, the right of trial by jury shall be preserved.' This provision, correctly interpreted, cannot be made to embrace the established, exclusive jurisdiction of courts of equity, nor that which they have exercised as concurrent with courts of law; but should be understood as limited to rights and remedies peculiarly legal in their nature, and such as it was proper to assert in courts of law, and by the appropriate modes and proceedings of courts of law.

"With respect to the character and effect of decrees in chancery, although they now rank in dignity upon an equality with judgments at law, it is well known that they were once regarded as not being matters of record; and that the final process incident to judgments at law was unknown to and not permitted in courts of equity; that where such process has been permitted to them it has been the result of statutory enactments. But the extension to a court of equity of the power to avail itself of common law process cannot be regarded as implying any abridgement of the original constitutional powers or practice of the former; but as cumulative and ancillary, or as leaving those powers and that practice as they formerly existed, except as they have been expressly restricted. Amongst the original and undoubted powers of a court of equity is that of entertaining a bill filed for enforcing and carrying into effect a decree of the same, or of a different court, as the exigencies of the case or the interests of the parties may require. *Vide* Story's Equity Pleadings, §§ 429, 430, 431, upon the authority of Mitford, Eq. Pl., 95, and of Cooper's Eq. Pl., 98, 99."

As stated above, the claim of lack of jurisdiction in cases where the original decree called for the payment of money, was abandoned in the Court of Appeals and in lieu thereof appellees as-

serted that there was no decree against them which could be made the basis of jurisdiction on the ground here under consideration. We have already called the court's attention to the holding of the Court of Appeals of the Third Circuit in Elkhart National Bank vs. Loan Co., in speaking of the decree contemplated by the Minnesota statutes and the appropriate remedy thereon, as follows:

"Of course, if the decree is conclusive, the court could not enforce it against foreign stockholders, but in such case *it might be enforced by auxiliary equity proceedings* where the stockholders reside."

The correctness of this holding, as respects the jurisdiction, cannot be doubted if correct regard be given to the principles established by this court in Hancock National Bank vs. Farnham, supra.

It is true that so far as the decree of the Minnesota court ascertained the necessity for and amount in which all the stockholders in common should contribute, it was not a decree in the sense of a personal judgment against appellees.

Great Western Telegraph Co. vs. Purdy, supra.

But in so far as it adjudicated by its decree the amount of the corporate debts, the assets available for the liquidation thereof and the deficiency to be contributed by the stockholders, it was a decree against them, and as such entitled to the same faith and credit in every jurisdiction as accorded it in the courts of the state of its rendition.

In other words, it was a decree against appellees, binding and conclusive upon them by representation to the extent indicated, until impeached for fraud.

Hawkins vs. Glenn, supra.

Had the law and procedure prescribed for such cases in Minnesota been confined to an ordinary assessment, or *ex parte* order, some question might be raised as to whether such order or assessment constituted a decree within the meaning of the jurisdictional ground under consideration.

But as by that law it is required that the proceedings had in the domicil shall proceed in due course to a final decree, it cannot be contended in view of the holding of this court in Hancock National Bank vs. Farnham, supra, that this was not a decree against these defendants.

It is true that, as held in the case last cited, it may be met by so-termed individual defenses, viz.: payment, or the fact that de-

fendant was not a stockholder, but in all other respects it is a decree conclusive and binding upon him.

Under these circumstances no substantial reason can be suggested why the case at bar falls without the scope of the original jurisdiction of equity exercised in auxiliary proceedings for the purpose of carrying out and effectuating the decree, as against these defendants.

(c) JURISDICTION ON THE GROUND OF AVOIDING A MULTIPLICITY OF SUITS.

In the absence of some insuperable objection, the facts and situation of the case at bar present the most cogent reasons of convenience, expediency and economy in favor of the exercise of the comprehensive jurisdiction of a court of equity.

The fact that that jurisdiction has been exercised in analagous cases should resolve any doubt in favor of its existence.

No argument, however plausible, can convince the court that threshing out the questions of law and fact, common to the cases of all the defendants herein, and on which petitioner's rights are predicated, in forty-seven actions at law is as "plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration as the remedy in equity."

No abstract definition can be given, or arbitrary rule laid down, applicable to all cases, of the precise grounds whereon equity will assume jurisdiction and afford relief.

"The circumstances of each case must determine the application of the rule."

Rich vs. Bracton, 158 U. S. 405;
Payne vs. Hook, 7 Wall. 430;
Watson vs. Sunderland, 5 Wall. 74.

An action by an insurance company against a carrier for loss of goods, insured by the former, after payment of its policy and subrogation to the shipper's rights, would seemingly present no features of equitable character.

Notwithstanding, where the insurer had paid fifteen such policies on goods destroyed by the same carrier and in the same accident, a bill in equity was sustained, this court saying:

"The bill discloses fifteen different contracts of affreightment of a similar character which have been adjusted by the appellees and which form the subject of this suit. They have been joined in the same bill, and much inconvenience and vexation have been prevented."

Garrison vs. Memphis Ins. Co., 19 How. 312.

The reasoning of the lower courts in the case at bar, applied to the decision last cited, would have unqualifiedly denied jurisdiction, as an attempt to try fifteen suits, having no contractual connection, in one, wherein the defense of the carrier might be different in each, owing to the different classes of freight, etc.

In Oelrichs, vs. Spain, 15 Wall. 211, suit was instituted in equity against the obligors of, and to recover on, several injunction bonds. In answer to the objection that equity was without jurisdiction because there was an adequate remedy at law, this court said:

"The direct proceeding in equity will save time, expense and a multiplicity of suits, and settle finally the rights of all concerned in one litigation."

It may be noted in this case that the only multiplicity suggested was between the several obligees themselves in which the obligor defendants obviously had no interest.

This court has said of the grounds of chancery jurisdiction:

"The jurisdiction in equity attaches unless the legal remedy, both as respects the final relief and *the mode of obtaining it*, is as efficient as the remedy which equity would confer under the same circumstances."

Kilbourne vs. Sunderland, 130 U. S. 505-514.

"The equity jurisdiction will be sustained when time, expense and a multiplicity of suits will be saved."

Oelrichs vs. Spain, 15 Wall. 211.

"There may be a legal remedy, and yet, if a more complete remedy can be had in chancery, it is a sufficient ground for jurisdiction."

Wylie vs. Cox, 15 How. 415.

"Parties are sometimes remitted to a court of law, but this is never done where the remedy is not as effectual and complete there as the chancellor can make it. Equity sometimes takes jurisdiction on account of the parties and sometimes on account of the relief proper to be administered."

May vs. Le Clair, 11 Wall. 217-236.

Other illustrations might be cited, but the foregoing will suffice to demonstrate the breadth and liberality of the exercise of the jurisdiction.

We contended below that the case at bar fell within the class where a large number of parties are interested in a litigation hav-

ing similar origin, depending on common questions of fact and law, and wherein those questions could be more expeditiously and conveniently disposed of in equity, both for parties and court, than by proceeding at law. We further contended that in and by one proceeding all these questions could be disposed of in a single comprehensive decree, and that in this method an unnecessary and vexatious multiplicity of suits would be avoided.

In opposition, it was urged that there was no privity between the several defendants; that their obligations were several and distinct; that the common questions were questions of general law, involving the extra-territorial effect of the Minnesota statutes and judicial proceedings, as well as the right of the receiver to sue, and finally that there was no state of facts alleged in the bill or prayer calling for the exercise of the peculiar functions of a court of equity.

It was further objected that the bill must invoke the exercise of equitable jurisdiction on the strength of its own allegations and the theory presented by it. Following this, an analysis of the bill was resorted to, and the conclusion reached that plaintiff presented a claim in contract, arising from the defendants' subscriptions to the stock; that the amount of the liability was claimed to have been conclusively ascertained in the Minnesota proceeding; that from the same source complainant claimed to derive his right to sue, and therefore all that was left on complainant's theory for the several stockholder defendants were the so-termed separate and independent defenses that they were not stockholders or had paid their contributions.

It was therefore asserted that there were no common grounds other than similar legal propositions that complainant must establish as a condition to relief, and no common defenses on the part of the defendants.

So far as the available defenses claimed by complainant to be open to the defendants were concerned, no defendant was interested in the defense of any co-defendant, and the result of permitting the joinder of all in a single suit would be the equivalent of combining several separate and distinct legal demands seeking the recovery of as many debts.

In the foregoing we have attempted to fully summarize the line of objection pursued below.

These objections present more of the plausible than substantial, and an analysis thereof cannot fail to disclose a confusion of matter going to the merits or bearing upon the ultimate right

to relief, with matter going strictly to the question of jurisdiction to grant that relief.

Furthermore, their plausibility is weakened by the unmistakable evidence of dilatory tactics and obstructive technicality.

(1) That petitioner's right of recovery *on the merits* depends upon the essential averments of the bill, and the theory of right thereby presented goes without saying. That unless those facts and the ultimate conclusions claimed to be deducible therefrom be sustained, petitioner is not entitled *to relief on the merits*, is obvious.

This, however, has nothing to do with the question of jurisdiction.

The requirement, so far as the latter is concerned, upon the ground presently under consideration, is satisfied by showing that the case of petitioner against each of the defendants had a common origin in the insolvency of the corporation of which they were members, and with which they were privy, and the laws of Minnesota relating thereto and governing the status thus alleged, whereunder all became similarly liable.

The common requirement thus indicated, both in matter of fact and law, as a condition to recovery, as respects each defendant, with the common interest of each defendant in resisting *each essential ground* thus relied upon, is the basis for assumption of jurisdiction in equity to obviate the necessity of asserting and establishing in each of forty-seven different proceedings what may be passed upon in a single comprehensive decree.

(2) The averments of the bill fully disclose these jurisdictional phases, and it is utterly futile for appellees to attempt to disguise what is perfectly apparent on the record by resorting to such generalities as those disclosed above.

One of the most conspicuous fallacies indicated by the proceedings below is found in the reasoning of the Circuit Court on the subject under consideration, as follows:

"The bill asserts the conclusiveness of the Minnesota decree upon the defendants, so far as the necessity for the assessment and the amount charged against each stockholder are concerned; Hancock Bank vs. Farnum, 20 S. C. Rep. 506. Assuming that position to be sound—and, if I do not so assume it, if these questions are still open for determination, so far as the Pennsylvania stockholders are to be affected, the bill must fail for want of necessary parties—it is clear that only two classes of questions remain to be decided. The first is, whether a given stockholder was ever lia-

ble as such; and the second is, whether, if he were originally liable, his liability has ceased either in whole or in part. Manifestly, as it seems to me, the defendants have no common interest in these questions, or in the relief sought by the receiver against each defendant."

Record, pps. 117-118.

In other words, unless petitioner *has maintained his right to relief* he has not shown sufficient to confer jurisdiction.

And again from the same opinion:

"Before a controversy between a receiver and numerous separate debtors of the corporation can be joined in one proceeding, there must be some common relation, or common interest, or common question to serve as a basis for the joinder." (Rec., p. 117.)

Combining the two proposition quoted, the result is, that if common questions exist, jurisdiction may be invoked successfully, but that such common questions cannot be held to exist when the right to relief necessarily presupposes establishing their existence and interpretation according to the pleader's claim.

Such reasoning so clearly confounds "jurisdiction" and "right to relief" as to be self-destructive and its own best refutation.

See Vol. 1, Pom. Eq. Jur., § 131.

(3) It is said that the bill shows no community of interest between the defendants in questions of fact or law. Yet the record submitted to this court discloses that all the defendants are asserting and relying upon common grounds of defense to meet the common claim asserted against all, viz.: want of extra-territorial effect to the Minnesota laws; denial of the efficacy of the proceedings in the courts of that state, and the want of any remedy or right of enforcement of the liability.

(4) It is said that the bill does not allege that it invokes jurisdiction on the ground of avoiding multiplicity of suits. If the failure to make this allegation was of any materiality, it was something not calling for a dismissal, and was easily remedied by amendment. If the facts alleged showed a state of facts justifying the exercise of jurisdiction on this ground, its addition would add nothing. On the other hand, if the substantial allegations were insufficient in the respect indicated, its presence would not avail.

(5) It is said that the bill does not allege any common defenses, and nothwithstanding the demurrers "*non-constat*," the defendants will present any other defense than want of jurisdiction in equity."

Assuming a defect in the respect indicated, it is too late for defendants to avail themselves thereof. They, by asserting the common defenses by demurrer, have themselves supplied by their own pleading what they claim has been omitted from the bill.

(6) The assumption that the only defense open is that of payment or non-stockholding is anticipation. On the demurrers there are no defenses in either regard. The facts stand admitted. The case is thus bereft of a single substantial element save that common to all, and involved in the common grounds asserted by the demurrers.

Powell vs. The Earl of Parvis, 1 Yon. & Jer. 159;
Commissioners vs. Glasse, 41 L. R. Ch. N. S., 409.

(7) Taking the facts and situation of the case, as thus presented, is it not too obvious to require comment, that the objection to the jurisdiction of equity is wholly unsubstantial and that the real and substantive grounds involved are such as may be passed upon once and for all in a single suit?

Is it not obvious that the attempted remission of petitioner to a court of law is to embarrass the prosecution of these claims, by multiplying the litigation in the hope that requiring threshing over the same straw again and again in forty-seven distinct and separate actions may prove so extravagant an investment that the issue may be abandoned and defendants thus escape?

(9) If facts ever disclosed a case for the exercise of liberality as respects the interpretation of jurisdiction, the experience of this litigation in the circuit in question presents such a case.

But it is unnecessary to urge any application of unusual or extraordinary rules.

The facts here disclose a case falling fairly within the rules relating to jurisdiction on the ground of avoiding multiplicity of suits.

Hereunder it should be noted in the first instance that this ground in and of itself, and without regard either to the character of the right asserted or relief demanded, constitutes a *distinct element* of jurisdiction.

As said by Prof. Pomeroy:

"In fact, the multiplicity of suits, which is to be prevented, constitutes the very inadequacy of legal methods and remedies, which cause the *concurrent* jurisdiction to intervene under such circumstances."

Vol. 1, Pom. Eq. Jur., § 243.

The use of the term "concurrent" is pertinent in the explanation thus quoted, for, obviously, if the right involved or the relief invoked were equitable, the jurisdiction would be exclusive.

Vol. 1, Pom. Eq. Jur., § 139.

The prevention of multiplicity of suits as an independent jurisdictional ground has been frequently recognized in the federal precedents.

Smythe vs. Ames, 169 U. S. 466-516;
Louisville Ry. Co. vs. Improvement Co., 57 Fed. 42-45;
Pomeroy, § 243, supra;
McConwaughy vs. Permoyer, 43 Fed. 337;
Hyman vs. Wheeler, 33 Fed. 629, per Brewer, J.;
De Forrest vs. Thompson, 40 Fed. 375, per Harlan, J.

Jurisdiction on this ground is undoubtedly most frequently called into exercise in cases where some right is asserted by numerous defendants against complainant which the bill seeks to have adjudged invalid, or cases relating to titles in lands where a number of defendants claiming under a common source of title are asserting rights adverse to complainant claiming the whole under an independent source, etc.

These cases, however, are not the grounds of, but mere illustrations of, the exercise of jurisdiction.

The general rule determinative of the case at bar is thus defined by Prof. Pomeroy:

"The fourth (class) is the exact converse of the third. One determined party has a general right against a number of persons, *common to all in some of its features, but still affecting each individually, and only with respect to his separate, distinct interests;* so that each of these persons has a separate and distinct claim in opposition to the asserted right."

Again, "The only community among them is in the questions at issue to be decided by the court, in the mere external fact that all their remedial rights arose at the same time from the same wrongful act, are of the same kind, involving similar questions of fact, and depend upon the same questions of law. This sort of community is sufficient, in the opinion of so many and so able courts, to authorize and require the exercise under such circumstances of the equitable jurisdiction in order to prevent a multiplicity of suits."

Again, "Under the greatest diversity of circumstances and the greatest variety of claims arising from unauthorized public acts, private tortious acts, invasion of property rights, violation of contract, obligations, etc., the weight of authority is simply over-

whelming that the jurisdiction may and should be exercised, either on behalf of a numerous body of separate claimants against a single party, or on behalf of a single party against such numerous body, although there is no common title nor community of right or of interest in the subject matter among these individuals, but where there is and because there is merely a community of interests among them in the questions of law and fact involved in the general controversy or in the kind and form of relief demanded."

Vol. 1, Pom. Eq. Jur., §§ 255-259-260.

See, also, generally, Vol. 1, Daniels Ch. Pr. (Ed. 1845), 445-446;

Mayor of York vs. Pelkington, 1 Atk. 282;

City of London vs. Perkins, 4 Bro. Par. Ca., 158;

Tenham vs. Herbert, 2 Atk. 483.

The question was squarely presented and decided by the Circuit Court of Appeals of the Sixth Circuit in the recent case of Bailey vs. Tillinghast, 99 Fed. Rep. 801, wherefrom we excerpt the following:

"For this latter purpose it is immaterial whether the suits to be avoided or prevented are of a legal or an equitable character. The object is the same in either case, and the reason for the proceeding is the same. * * * * The object is to minimize litigation, not only in the interest of the public, but also for the convenience and advantage of the parties. If the receiver was compelled to bring separate suits it would entail a vast expense upon the fund in trying over and over again the identical questions of law and fact with each stockholder, and with no substantial advantage to him, but injury rather in the increased costs in the immediate suit and the large burden upon the fund created by the many suits against the others."

Similarly, the Court of Appeals of the Eighth Circuit, in Hayden vs. Thompson, 71 Fed. Rep. 60:

"If this suit cannot be maintained, the receiver must bring a separate action at law and have a separate trial by jury of twenty-four actions, one against each of the shareholders. * * * * * * * * These twenty-four law suits constitute the adequate remedy at law, which, it is argued, prohibits the maintenance of this suit in equity, but the remedy at law which will preclude the maintenance of a suit in equity must be plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration as the remedy in equity. Would these twenty-four actions at law be as efficient and practical and as prompt to attain the ends of justice as this suit in equity? *The question is its own answer.*"

In Cockrill vs. Cooper, 86 Fed. Rep. 7-14, the same court say:

"In determining whether a suitor should be permitted to sue in equity, the Federal Courts have always attached much importance to the fact that the remedy in the latter forum, as compared with the remedy at law, will save time and expense and a multiplicity of suits and settle finally the rights of all concerned in one litigation. In other words, the argument *ab inconvenienti* is never overlooked, but is given great weight. * * * * If the receiver is compelled to sue at law, numerous actions must be brought. * * * * If the legal remedy is pursued, it is probable, therefore, that the receiver would find it necessary in preparing his proof in numerous cases to travel over much of the same ground in each case, while it is certain that the burden and expense of the litigation would be largely increased, and that the litigation itself would be needlessly prolonged and delayed."

Other cases might be cited, but the foregoing are sufficiently illustrative of the spirit of the rule to bring the case at bar clearly within its comprehensive scope.

CONCLUSION.

In submitting the foregoing, we appreciate that this brief has been extended perhaps unnecessarily in matters of detail. The importance of the questions here at stake, not alone in the case at bar, but generally, will perhaps make sufficient apology in this regard.

For the reasons herein stated, it is submitted that the decision and decree below should be reversed and the cause remanded for further proceedings.

Respectfully submitted,

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OCTOBER TERM, 1902.

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WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION), PETITIONER,

vs.

EDWARD P. ALLISON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

REPLY TO BRIEF SUBMITTED AMICUS CURIÆ.

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Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 77.

WILLIAM E. HALE, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company (a Corporation), Petitioner,

vs.

EDWARD P. ALLISON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

REPLY TO BRIEF SUBMITTED AMICUS CURIÆ.

The brief, presented *amicus curiæ* in this case, has been subjected to so much refined and technical differentiation as to obscure the precise lines of argument intended to be urged.

We shall confine this reply to an attempt at summarizing the contentions and answering the same, so far as answers have not already been anticipated on our original brief.

The main contention is that the liability is unenforceable in any jurisdiction outside that of the corporate domicile.

An analysis of the argument presented in support of this claim discloses three principal reasons:

First. That the liability is not several and independent.

Second. That unless the State of domicile has abdicated its sovereignty (whatever this may mean as applied to liabilities of this class), either (1) by providing an independent and several remedy for creditors, or (2) by providing for substituted service of process upon non-residents so as to bind them by personal judgment, foreign enforcement is impossible.

Third. That the general principles of equity procedure, as well as the express provisions of the local law, contemplate a single omnibus proceeding in the courts of the domicile.

1. It is a noteworthy fact that the concession in favor of the rule of law permitting the enforcement of the several and independent liability is predicated on a reason never heretofore suggested, viz., on the ground of abdication of sovereignty by the State.

The rule as respects this class has been so far settled as to now be axiomatic in our jurisprudence, that the right of enforcement is based solely and exclusively upon principles of contract. The local law in these cases plays no further part than as determinative of the constituent elements of the contract.

It would hardly be contended at the present time that

the right of a receiver of a corporation suing in a foreign jurisdiction, after an assessment for unpaid capital in the courts of the domicile, was dependent upon abdication of sovereignty. Yet it would be precisely as logical to predicate the right to relief in the case supposed on this ground.

By a similar course of reasoning counsel would doubtless claim that the right of a receiver of a national bank, to enforce an assessment on the capital stock as against a stockholder, was referable to a similar abdication of sovereignty upon the part of the National Government.

The attempt to reconcile the established rules in this class of liabilities, with the reasoning advanced in the brief submitted, is forced and predicated on an entirely false hypothesis.

2. Reduced to its lowest terms and eliminating meaningless and unsubstantial reasons, the contention is that a liability imposed by the laws of the State of domicile upon stockholders equally for the benefit of all creditors in common is unenforceable except as against those stockholders subject to the jurisdiction of the domiciliary courts for the purpose of rendering personal judgment.

Thus it is said at page 43 :

"The Minnesota legislature ought undoubtedly to have made its statutory procedure complete and effectual by providing for substituted service on non-residents, and the result of its failure to do so may be that in cases like the present, no effective remedy can be had in any court."

If it has ever been held that such a law as that supposed could be passed and sustained upon constitutional grounds so as to bind a non-resident stockholder as by a personal

judgment, counsel has failed to enlighten us by the citation of precedent.

Eliminating this phase, we may examine the result of this contention. We have thus two classes of stock liabilities enforceable against foreign stockholders: (1) where the liability is several and independent, and (2) where it is common and equal, but the statutes provide for substituted service upon the non-resident, so as to render a personal judgment as a basis of the foreign suit.

This would exclude the enforcement of the stock liability under the national banking act by a receiver, after assessment by the Comptroller, and equally the liability imposed by those statutes which, according to local interpretation, is enforceable after assessment in the domiciliary court at the suit of the general corporate receiver.

See Howarth *vs.* Lombard, 175 Mass., 570.
Howarth *vs.* Ellwanger, 86 Fed., 54.
Sheafe *vs.* Larrimer, 79 Fed. Rep., 921.
Howarth *vs.* Angle, 162 N. Y., 179.

The liabilities thus referred to are obviously outside both classes suggested in the argument. In view of the established law, counsel must either amend his reasoning or add an additional class with some further novel grounds for its support.

3. Counsel further urges the insufficiency of the Minnesota statute. The argument merely reasserts the contention which has been urged all through this litigation that the Minnesota statute should be so construed as to bind the resident stockholder and relieve the non-resident from liability.

Two general reasons are presented:

First. That, according to equity procedure, an omnibus proceeding in the domiciliary court is required from practical considerations, which shall settle once and for all the rights and liabilities of all parties in interest.

Second. That the statute of Minnesota relating to the remedy carries out this equitable idea, and that the rights of creditors and liabilities of the stockholders are exhausted in this single proceeding.

As to the first, eliminating certain State precedents wherein the reasoning has been adduced to establish the non-enforcibility of the statutory liability and the rule and reasons in this regard have been indiscriminately applied to the several and independent, as well as what may be termed the equitable liability, we know of no precedent sustaining the proposition directly or by analogy. The frequent case of proceedings in equity for the sequestration of corporate assets, including unpaid capital, presents the most familiar illustration of the contrary principle. It has never been suggested that an omnibus proceeding bringing in all stockholders is essential. In fact, it is settled that it is not essential to bring stockholders in at all.

Hawkins *vs.* Glenn, 131 U. S., 329.

Those stockholders within the jurisdiction of the court may in such cases, at the option of the creditor, be brought into the original proceeding and the assessment enforced against them by an immediate decree, leaving the receiver therein appointed to resort to ancillary or auxiliary proceedings to enforce the liability as against those not brought in.

Vol. 3, Thompson on Corp., § 3492.

As reasons for the supposed equitable requirement of an omnibus proceeding we quote the following from pages 29 and 30 of the brief in question:

"There should be a single roster of adjudicated stockholders and a single table of the holdings of the several shares of stock. Otherwise (for example), in a case requiring only a partial assessment, one might in the end be assessed seventy per cent. of his maximum liability on the theory that the total stock issued was at one figure, and another only thirty per cent. on the theory that the total stock issued was at a much larger figure; or two different men might, in different tribunals or different suits, both be held as stockholders of certain disputed shares of stocks."

"There should be a single adjudication of the times of ownership of stock by the several stockholders, for otherwise two successive holders of certain shares might both be held, or the wrong one might be held or both might go free."

"The necessity that all questions of the personal liability of stockholders be adjudicated in the omnibus proceeding and be not left to subsequent distinct suits, appears from the fact that any present defense on the merits successfully maintained by one alleged stockholder, will increase the proportion in which all the others are liable."

Each of these supposed reasons might be urged as effectively in a case involving unpaid subscriptions as in the case at bar.

Everything thereby suggested may be disposed of by the general statement that they present questions of moot consideration so far as any issue involved in the present case is concerned, and that it will be time enough to meet and determine them when a case arises wherein they are pertinent.

There is here no question of partial or unequal assess-

ment; no dispute is presented as to conflicting ownership in stock; the time of holding presents an immaterial factor, as all of the stockholders now sued have admitted by their demurrers that they were such at the time of the insolvency of the corporation. As the assessment involved is for the maximum liability and the gross amount contemplated therefrom, if realized in full, would not equal one-half of the deficiency of assets, there is no question of increasing or diminishing the liability by the successful interposition of separate defenses.

The claim that there should be a single roster of adjudicated stockholders and a single table of the holding is clearly opposed to established rules in this class of cases. No such adjudication is required as a condition precedent to the right to sue. The latter is sufficiently predicated of the proceedings had and taken in the courts of the domicile in the adjustment of the affairs of the corporation, determining the necessity for and amount in which all stockholders in common must contribute.

Hawkins *vs.* Glenn, 131 U. S., 319.

See also cases cited *supra*.

Hanson *vs.* Davison, 76 N. W. Rep., 254 (73 Minn., 454).

The adjudication of holding or non-holding is the appropriate function of the court in which the personal rights of the stockholder are presented, in a case where jurisdiction of the stockholder for that purpose is had.

Hancock Nat'l Bank *vs.* Farnham, 176 U. S., 640.

Great Western Telegraph Co. *vs.* Purdy, 162 U. S., 329.

It is also suggested that "there should be a single determination of the dates of the incurring of the corporate liabilities."

This element is equally immaterial in the case at bar. Here upon the conceded facts all parties, creditor and stockholder, were respectively such at the date of the corporate insolvency. From this the liability follows as a matter of law.

> Gebhard *vs.* Eastman, 7 Minn., 40, 55, and cases cited, page 19, Petitioner's Brief.

The suggestions that the character of the indebtedness of the corporation, whether in contract or tort, and likewise "of the amount of capital stock paid up" should be similarly determined, are purely moot so far as the case at bar is concerned. The character of the indebtedness is here alleged and admitted; but if it were otherwise the question of *ultra vires* would be affirmative matter to be presented by way of defense.

The element of paid-up stock is in no event a factor. Unpaid capital is, for obvious reasons, an asset to be ascertained and accounted for with other assets of the corporation. In the case at bar, this is embraced in the finding of the decree that the total aggregate of corporate assets of every kind and character amounts to $440,000 (Rec., p. 85, par. fourth).

These supposed insurmountable objections to the foreign enforcement of liabilities of this class are neither new nor novel. In the progress and development of the law of foreign enforcement of liabilities to corporate creditors, it will be found that they have successively assailed: (1) The right to enforce unpaid subscriptions in foreign forums after

an assessment or call by the domiciliary court administering the corporate affairs; (2) the enforcement of the stock liability under the national banking act; (3) the foreign enforcement of the several and independent liability of stockholders; (4) the enforcement of the statutory liability where collectible at the suit of the general corporate receiver after assessment in the courts of the domicile.

Concluding, therefore, on this phase, the claim that the general principles of equity demand an omnibus proceeding, confined in its effect to parties directly joined therein, is unsustainable on any principle whatsoever. In the absence of statute specifically governing the matter, it is believed that wherever the liability is created for the benefit of creditors in common, the application of general principles of equity would, by analogy to ordinary rules of practice, permit the court of the domicile, having jurisdiction of the corporation, to ascertain in appropriate proceedings the relations between the creditor and corporation, the necessity and amount in which stockholders should be held to contribute, and that this adjudication would be final and conclusive on all stockholders and in every forum where suit might be brought.

The entire trend of authority is in this direction; and as the result thereby contemplated works in harmony with the general spirit and purpose of the law taken as a whole, i must and will become a settled principle in our jurisprudence.

"If an assessment is to be laid upon the members or stockholders, or contribution enforced from them according to the law of the State under which the corporation is created,

the courts of that State alone can afford complete and effectual relief."

Post *vs.* Railway Co., 144 Mass., 341.

"The proper courts of the State under whose laws the corporation is established have full jurisdiction over the corporation. Whether in such a suit such courts can acquire jurisdiction over all the stockholders, wherever they reside, in order to determine their liability under the statutes to which they may be held to have assented in becoming stockholders, it is unnecessary now to consider. The proceedings are somewhat analogous to the laying of an assessment ratably upon all the stockholders for the purpose of paying the debts of the corporation in the manner and to the extent prescribed by the statutes."

Hancock National Bank *vs.* Ellis, 51 N. E. Rep., 207, 211.

"The determination of the questions involved is a part of the proceedings of the court in the administration of the affairs of a local insolvent corporation. The court of Washington, acting under its general authority in such administration, is the only tribunal which has jurisdiction to determine the amounts due creditors, and to collect and apply the assets of the corporation. The undertaking of the stockholders relates directly to the payment of amounts so to be ascertained. The ascertainment is like a common case of a judgment against a corporation, which is binding on stockholders. The members of such corporations, as well as the corporations themselves, are within the jurisdiction of the local courts, so far as is necessary for the determination of the rights and liabilities of the corporation and its members among themselves. In reference to this kind of liability, such decisions and orders are binding on stockholders who are not before the court otherwise than by their membership in the corporation."

Howarth *vs.* Lombard, 175 Mass., 570.

"The appellant must first seek a remedy in the courts of the State of Michigan, and there have authoritatively determined the respective relations of creditors and all stockholders of this corporation towards it and towards each other; and then, if it shall be necessary, their rights as respects stockholders, domiciled in this State, may be enforced in the courts of this State."

Young *vs.* Farwell, 139 Ill., 326.

"No decree of the courts of this State could result in taking an account and dissolving a corporation of another State. It is for the courts of that State to enter a decree stating the account, winding up the affairs of the corporation, and determining the relation of the stockholders, creditors, and corporation to each other. When that question has been determined by the courts of that State, then, if it becomes necessary, the creditors, stockholders, and the corporation, or its representative, may, as against stockholders who are domiciled here, appeal to the courts of this State, and have, as against such domiciled stockholders, adequate relief."

Tuttle *vs.* National Bank, 161 Ill., 497.

"We think it cannot be doubted that a decree against a corporation in respect to corporate matters, such as making of an assessment in the discharge of a duty resting on the corporation, necessarily binds its members in the absence of fraud, *and that this is involved in the contract created in becoming a stockholder.*"

Hawkins *vs.* Glenn, 131 U. S., 319.

"In principle, there can be no difference in this respect between an action to enforce an unpaid subscription, and one to enforce a stockholder's liability."

Hanson *vs.* Davidson, 76 N. W. Rep. (Minn.), 254.
Reaffirmed in Langworty *vs.* Garding, 74 Minn., 325.
Straw Mfg. Co. *vs.* Kilbourne, 80 Minn., 125–134.
See also Holland *vs.* Duluth, 65 Minn., 324.

These principles may be sufficiently predicated of the following rules of general application: (1) The fund contemplated from the liability is a trust fund for the benefit of creditors; (2) equity never allows a trust to fail for want of a trustee; (3) because it is necessary that such jurisdiction should be assumed to prevent a miscarriage of justice and insure to creditors the rights assured them by law in their dealings with the corporation.

They carry out the spirit of the general rule stated by the supreme courts, respectively, of Massachusetts and Maine in Bank *vs.* Ellis, 172 Mass., 47, and Childs *vs.* Cleves, 95 Me., 498, as follows:

"It certainly concerns the due administration of justice that all stockholders, wherever they reside, should be compelled by proceedings somewhere, to perform the statutory obligations towards creditors of the corporation which they have assumed by becoming stockholders."

Reaffirmed in Hale *vs.* Cushman, 51 N. E. Rep., 874.

This brings us to a consideration of the second general ground that the Minnesota statutes have so far limited the jurisdiction of the courts of that State, that the operative effect of their proceedings is limited to the resident stockholders, and in consequence non-residents are wholly relieved from responsibility.

In leading up to the argument of this question counsel states, at pages 34 and 35, the following propositions:

"Just as a State may, by statute, impose a personal liability upon stockholders for corporate debts, so a State may, by express enactment, require all persons who become members of certain corporation, or class of corporations, to surrender their right in respect to the particular statutory liability in

question *to the protection of the equitable principles under discussion.*"

"Where the home State has not determined those questions by express statute, the general principles of equity above stated, have full force. When it has so determined them, its determination is binding everywhere."

"The equitable principles under discussion" presuppose an omnibus proceeding to which the non-resident cannot be made a party.

Literally construed, the first of these propositions would indicate, as counsel's view, that the power and authority of the State was limited to requiring non-resident stockholders to submit to conditions which are wholly inoperative and of no force or effect.

Eliminating the reasons assigned therefor, in the propositions excerpted above, an otherwise correct statement of a general rule has been destroyed by interpolating counsel's erroneous views of the principles of equitable procedure.

Amended in this respect, we cordially indorse their correctness. Thus amended, the general statement would be that, in the absence of statute, the State may and impliedly does require all stockholders to submit their right, in respect to the class of statutory liabilities in question, *to the regular and ordinary jurisdiction of chancery exercised in the administration of corporate affairs.* In the presence of a statute limiting or qualifying such jurisdiction, the statute is controlling.

To this we should add a third suggestion, viz., where the statute is clearly declaratory of the ordinary procedure in chancery, it should be interpreted accordingly and the ordi-

nary power and jurisdiction of chancery assumed to exist, unless negatived by the express terms of the statute itself.

The case in this aspect turns upon a determination of the question whether the Minnesota statutes have thus annulled the ordinary chancery jurisdiction.

The general purpose and nature of the proceedings contemplated by these statutes may be explained in the language of the supreme court of that State, found in Arthur *vs.* Willius, 44 Minn., 409, 412:

"An action against a corporation, under Gen. St. 1878, c. 76, is in the nature of an action to wind up its affairs, to collect and convert all its assets, and appropriate them ratably among creditors, and to enforce the individual liability of stockholders and others to the extent of the deficiency of assets. As was said in Merchants' Nat. Bank *vs.* Bailey Mfg. Co., 34 Minn., 323 (25 N. W. Rep., 639), 'It is an action not proceeding in the ordinary way of actions at law by trial of simple issues, judgment, and execution, but by the exercise of powers peculiar to the former courts of chancery.' The proceedings are susceptible of being moulded into almost any form necessary to accomplish their purpose of securing a full and final adjustment of the rights and liabilities of all parties growing out of the corporate business. During the progress of the proceedings new parties may be admitted or brought in, and new issues introduced from time to time, as they become necessary for the final winding up of the affairs of the corporation, and the enforcement of all the rights of creditors. The original complaint need not state more than a case for the sequestration of the corporate assets. Neither stockholders, directors, nor creditors, (save the one who institutes the suit,) need be made parties in the first instance. Other creditors may subsequently come in or be brought in. Stockholders and directors may also be brought in for the purpose of enforcing their individual liability. This may

be done at the instance or upon the complaint of any creditor who has become a party to the proceedings. In short, the proceedings are intended to be so elastic as to be susceptible of development during their successive stages of progress, as to reach not only all the corporate assets, but also all liabilities of stockholders and others so far as necessary for the payment of creditors."

The language quoted is in strict conformity with the uniform holding of the courts of that State in decisions both earlier and later than that cited.

It would be difficult to conceive of a broader or more comprehensive interpretation of the act, as indicative of an intention upon the part of the legislature, to invest the court of the domicile with the fullest chancery jurisdiction as respects sequestering *every form of liability available for creditors of an insolvent corporation.*

The general jurisdiction thus established, clearly embracing the power in question, is, however, claimed to be qualified by certain provisions as respects procedure. Hereunder it is asserted that the act contemplates a single proceeding to which stockholders must be made parties, and that the jurisdiction of the court is accordingly limited to the parties before it.

When we come to consider formal methods of procedure and to analyze the act in question in this regard, it has been held in many instances by the same court that its provisions in formal matters are meagre and its general purposes to be effectuated by the application of ordinary rules of equitable procedure. Thus, as said in State *vs.* Bank, 56 N. W. Rep., 575, referring to this act:

"Chapter 76 provides but a mere skeleton of procedure for the action authorized by it. Its provisions are very meagre. * * * The action is given for a remedy to which the creditor is entitled as a matter of right, and which does not rest in the discretion of the court. It is the duty of the court to make the action effectual and to exercise for that purpose the powers vested in it."

Similarly, in Hanson *vs.* Davidson, 76 N. W. Rep., 254, the same court say:

"The remedy for enforcing the liability must, in the first instance, from the nature of the liability, be an equitable action. Gen. Stat. 1878, chapter 76 (Gen. Stat. 1894, chap. 76) indicates and regulates to some extent the remedy, leaving to the court the duty of making the remedy effectual by an application of the principles of equitable procedure."

It remains to be ascertained what the ordinary methods of procedure adopted under that act contemplate. Primarily the proceeding is brought against the corporation in the nature of a creditor's bill for the purpose of sequestering its properties and the appointment of a receiver. To this proceeding may be added, either on the complaint of the original or an intervening creditor, a cause of action against stockholders for unpaid capital, *and for this purpose such stockholders are made parties defendant by amendment or otherwise.* This may again be enlarged in a similar manner for the purpose of enforcing the statutory stock liability where the corporation belongs to a class to which that liability extends.

This was the precise aspect of the case of Arthur *vs.* Willius, *supra*, wherein the original creditor filed his bill against the corporation and the stockholders, seeking from the latter

a recovery of unpaid capital, and an intervening creditor filed his complaint, realleging the same matter, and in addition the statutory liability of the stockholder defendants.

The purpose of this procedure is manifestly to bring as far as possible into a single proceeding and encompass in a single decree, without the necessity of resorting to auxiliary proceedings, the entire subject-matter.

This main purpose of avoiding circuity of action and multiplicity of suits runs throughout the entire line of decisions interpreting the procedure under the act in question.

As said by the supreme court of Minnesota in McKusick *vs.* Seymour-Sabin Co., 48 Minn., 158:

"It is entirely consistent with the established equity jurisdiction, and in accordance with established equity practice, to forestall a multiplicity of actions by bringing all the litigation into its grasp in one suit for a general accounting and complete adjustment of all rights."

Because stockholders are thus brought in, it is strenuously urged that the jurisdiction of the court and the rights of the creditors are exhausted in this proceeding. If this be true, *it must apply as well to a case involving unpaid capital as to one involving the statutory liability, for so far as the statute in question is concerned, or the procedure adopted pursuant thereto, no distinction between the two classes exists.* This will appear more clearly from an examination of sections 5909 and 5910, which are claimed to conclusively demonstrate that the jurisdiction of the court is limited by the rendition of judgments against the parties joined in the principal proceeding. These sections read as follows:

"SECTION 5909. In all cases in which the directors or other officers of a corporation, or the stockholders thereof, are made

parties to an action in which a judgment is rendered, if the property of such corporation is insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares held by him, or so much thereof as is necessary to satisfy the debts of the company."

"SECTION 5910. If the debts of the company remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers, and of the stockholders, and to adjudge the amount payable by each, and enforce the judgment as in other cases."

It is self-evident, however, that no such conclusion as that contended for would be sustainable for a moment if this case involved an assessment for unpaid capital had in the proceeding above indicated, and this, notwithstanding, in conformity to the rules of procedure adopted in that State, the local stockholders were brought in and made parties defendant.

Where the general proceeding thus referred to is excluded by an administration of the corporate properties, inaugurated under the insolvent laws of the State, the statutes in question as far as applicable are adopted in the separate proceeding for the administration and enforcement of the statutory liability.

This, however, in nowise modifies the general purposes of the law. The administration in the affiliated insolvency proceeding, pending in the same court, is substitued in part for the entire proceeding provided by the statutes in question.

International Trust Co. *vs.* Am. L. & T. Co., 65 N. W. Rep., page 78.

For the remainder, the situation and jurisdiction of the court remains the same.

This separate proceeding has been developed along the same lines adopted in cases where it was had as part of the entire proceeding contemplated by the act, viz., bringing in the stockholders within the reach of process, and thus avoiding the circuity of action incident to separate suits at law after an assessment.

Having regard to the general purpose contemplated in the act, this method of procedure does not and should not be held to deprive the court of one of the most essential elements of jurisdiction incident to its control over the corporation itself. No other effect should be accorded than in the similar case where the stockholders are brought in and the subject-matter involved unpaid capital.

If the contention asserted and relied on in the case at bar be sustained, it is self-evident that the purpose and scheme of the act, with the jurisdiction thereby contemplated, for rendering every fund available, has been largely defeated.

The conclusion contended for in this regard results in relieving stockholders, whether resident or non-resident, omitted from the principal proceeding, from liability, a conclusion in this regard not only not sustained by, but expressly negatived by the holdings of the supreme court of that State.

As said by that court in Harper *vs.* Carroll, 69 N. W. Rep., 619:

"The stockholders' liability is several, not joint; and a judgment against only a part of the stockholders within the jurisdiction does not have the effect of releasing the others."

Similarly, in Hanson *vs.* Davidson, *supra*, that court, after reaffirming the rules stated in the quotation last above, said as follows:

"There is nothing in the statute which justifies the conclusion that if a stockholder's liability is not enforced in the original action because he is a non-resident, an ancillary action may not be brought against him alone, after the amount for which stockholders are individually liable has been determined in the original action" (p. 461).

Again:

"Neither is there anything in the nature of the stockholder's individual liability or method of enforcing it, to prevent the enforcement of the liability against a stockholder so omitted from the original action. The constitution or the statute imposes the liability on all corporations, except those organized for carrying on any kind of manufacturing or mechanical business; and it follows *that every person* who becomes a stockholder in a corporation organized under our laws, contracts, with reference thereto and with the creditors of the corporation, that he will be liable for its debts, to the limit fixed by our constitution and statute."

The conclusion contended for by counsel is therefore not alone opposed to the principles established in analogous cases, but equally to the construction and interpretation of the local law, to which the question is primarily referable, by the courts of the domicile.

The anomaly of the result contended for as respects non-resident or foreign stockholders may be illustrated by an hypothetical case instituted under the act in question.

Suppose that in the case of Arthur *vs.* Willius, explained *supra*, foreign stockholders had existed, indebted to the cor-

poration for unpaid capital and also to the creditors for the statutory liability. Suppose further in that case the court of the domicile in the original proceeding had, after an accounting of the debts and assets, entered a decree determining that the entire unpaid capital should be called in, making an assessment or call therefor accordingly, and also that the maximum statutory liability should be collected from all stockholders in common.

It is clear that the resultant action of the court in determining the necessity for collecting the unpaid capital, as well as the statutory liability, proceed from the same state of facts, viz., an ascertainment of the debts and assets, or, as it is familiarly termed, an accounting. Under well-established rules it would, in the case supposed, be held that the foreign stockholder was present, represented by the corporation, for the purpose of these ascertainments, so far as the unpaid capital was concerned. Notwithstanding, applying the contention of counsel in the case at bar, the same adjudication, predicated of the exercise of the same functions and based upon precisely the same facts, would be treated as a nullity and of no effect in the matter of enforcing the statutory liability.

The attempt to thus arbitrarily divide the proceeding involving the exercise of identical judicial functions, referable to and governed by the same statute, can find no logical reason or justification.

Briefly digressing, it has in some cases been asserted in reference to the class of liabilities which may be termed equitable that one of the essential requirements or reasons for an omnibus proceeding was the protection of the stockholders and the adjustment of the equities between them.

From this it has been concluded that the right of the creditor is to be subordinated, and by application of the rule the contractual liability has been repudiated.

It would serve no useful purpose to extend this brief to the presentation of the variety of arguments that have been made in this respect. All obviously have one thing in common, viz., finding a means to facilitate a repudiation of the obligation. It goes without saying that the supposed equity of the stockholder is a matter exclusively for his benefit to be adopted and applied under circumstances where the application of the rule does not interfere with the paramount right of the creditor.

As said by the supreme court of Minnesota, in Hanson *vs.* Davidson, *supra:*

"It would seem that his (the stockholder's) right to contribution, in case he was required to pay more than his share as between himself and the other stockholders, is subordinate to the equities of the creditors, as he can secure such contribution by appearing in the original action."

The question of contribution is, however, not involved in the case at bar, where the maximum liability has been determined, and where, therefore, no claim for contibution can in any event arise.

Before leaving this phase of the effect to be accorded the proceeding in the courts of the domicile, we desire to again call attention to the class of liabilities involved in Howarth *vs.* Lombard, 175 Mass., 570; Howarth *vs.* Angle, 162 N. Y., 179; Howarth *vs.* Ellwanger, 86 Fed. Rep., 54; Shcafe *vs.* Larrimer, 79 Fed. Rep., 921.

These cases involved the foreign enforcement of a statu-

tory liability created by the laws of the State of Washington. The statute is extremely meagre, but, as interpreted by the courts of that State, the liability is an asset as to creditors and enforceable at the suit of the general corporate receiver as the common representative.

Wilson *vs.* Book, 43 Pac. Rep., 939.

In conformity with this construction, it is held that it may be enforced in the general winding-up proceedings, and for that purpose the court of the domicile, on application of the receiver, may make an assessment or call therefor.

It has been universally held that this assessment is binding on all stockholders, and that the rule of jurisdiction through representation by the corporation applies. In the case at bar, as heretofore sufficiently shown, it is held that the liability is not enforceable by the general receiver or in connection with the administration of the general estate.

In principle, however, no substantial difference can be claimed between these cases. Nor should it make any difference in principle, so far as the jurisdiction of the court or the finality of its action is concerned, that in one case the assessment is made in an action to which the corporation alone is party defendant, or, as in this case, where, for the purpose of preventing multiplicity of suits, the corporation and stockholders within the jurisdiction are joined. In both cases the general purpose is identical, to wit, the ascertainment of the facts upon which to predicate a call or assessment as against the stockholders. The general power of the court in both cases results from its jurisdiction over the corporation for the purpose of winding up its affairs and rendering every asset available for creditors. It is immate-

rial whether this object be accomplished in a single or several affiliated proceedings. The purposes and functions of the court are identical and the differences in the matter of procedure unsubstantial.

Finally, upon the phase of the proper interpretation of the Minnesota statute, it is urged by counsel at page 44 of his brief that the conclusions contended for are corroborated by the fact that subsequent to the decree of the Minnesota court in the case at bar the legislature of that State amended the pre-existing remedial statute "providing for the collection of the superadded liability of non-resident stockholders in a manner similar to that attempted in the present suit, thus showing that in the opinion of the Minnesota legislature there was up to that time no such statutory provison."

This assertion is neither correct as matter of fact or law. It is unnecessary to enter upon any detailed discussion of the provisions of the statute referred to, as the same in express terms excludes from its operation cases in the situation of that at bar.

By chapter 272, Gen. Stat. Minnesota 1899, the previous law relating to the enforcement and collection of the statutory liability was modified so as to provide for the enforcement thereof in the general insolvency proceeding and by the general corporate receiver along lines similar to the procedure under the Washington statute referred to above and to the recent law adopted by the State of Kansas, presently before this court for review, in the case of Evans *vs.* Nellis, under questions certified from the circuit court of appeals of the second circuit.

It would be precisely as logical to contend that the modi-

fication of the Kansas law by the legislature of that State was a recognition or concession that the several and independent liability of stockholders theretofore provided was a nullity as far as foreign enforcement is concerned.

The foregoing review covers the several grounds of argument aimed at demonstrating that the statutory contract in the case at bar is unenforceable outside the State of Minnesota and that the laws of that State should be so construed as to impose the entire liability upon domestic stockholders and relieve the non-residents from participation in the responsibility.

II.

OBJECTIONS URGED IN MATTERS OF FORM.

The brief in question suggests certain defects in matters of form which only require cursory answer.

Like many of the objections urged on the principal question, the latter present considerations of either superficial or purely moot character.

Conceding, for purposes of argument, that the theory of the present suit is properly conceived and the construction of the law contended for by petitioner is correct, counsel claims that the decree of the Minnesota court is insufficient, for the reason that it has failed to embrace *all* "the material matters relating to the assets and indebtedness of the corporation."

The following defects are specified: (1) Failure to find the dates of incurring the various debts; (2) the character of such debts; (3) the amount of unpaid subscriptions; (4) whether any of the indebtedness was contracted in excess of the debt limit, and therefore *ultra vires*.

The first, for reasons heretofore shown, is wholly immaterial. In cases where separate classes of stockholders are liable for particular classes of indebtedness such finding may be pertinent. No such facts exist in the case at bar. Here all stockholders were such at the date of the corporation's insolvency and all creditors held their claims at that time. The latter were ascertained and embodied in the judgments rendered.

All stockholders in a corporation at the date of its adjudication in insolvency are liable to all the several creditors existing at that time, as heretofore shown.

Gebhard *vs.* Eastman, 7 Minn., 40–44.
Olson *vs.* Cook, 57 Minn., 522.
Bank *vs.* Plow Co., 58 Minn., 167.

The character of the indebtedness and the suggested possibility of *ultra vires*, if pertinent for any purpose, are sufficiently disposed of in the case at bar by the facts alleged in the bill and admitted by the demurrers. These matters are alleged in paragraphs numbered four, six, eight, and twelve of the bill (Rec., pp. 8, 9, 12) to the effect that the indebtedness of the incorporation, lawfully contracted in the regular course of business, aggregated at the date of insolvency upwards of three million dollars; that the bill for enforcing said indebtedness was filed in the district court of Hennepin county, Minnesota, and resulted in a decree in favor of the creditors and against the corporation, establishing the same and determining the necessity for contribution by stockholders to the payment thereof; that the entire indebtedness of said corporation was held by the said several creditors to the suit aforesaid, by reason whereof and the facts stated all

the several stockholders are liable to contribute to the payment thereof.

In this condition of the record it is not essential to determine whether the supposed defense of *ultra vires* is available after the judgment of the Minnesota court or not. The primary object of the proceeding in the domiciliary court was to ascertain the claims of creditors entitled to participate in a recovery. The presumption should obtain in any event that the adjudication in this respect was correct and that the claims allowed were of the required character, at least until an affirmative defense properly invoking the questions referred to has been interposed.

The subject of unpaid subscriptions was considered above.

It is further said relative to the binding effect of the Minnesota decree that the functions of the domiciliary court are exhausted by matters which (1) directly affect the corporation, and (2) those which operate to extinguish the value of the non-resident stockholders' stock.

In this respect counsel says:

"It is a fundamental principle that where a given tribunal or a given jurisdiction has no power to make an affirmative personal judgment against a given person, it has not power affirmatively to adjudicate, as against him personally, any one essential feature of such liability."

In the abstract, and as affecting strictly individual rights, the principle stated is not disputed. Its error consists in the attempted extension to corporate administrations wherein the rule of jurisdiction by representation is now too thoroughly settled to be subject to doubt.

That in the latter cases the foreign tribunal has power to adjudicate certain essential features of the individual lia-

bility was settled by this court in Hancock National Bank *vs.* Farnham, wherein it was held that not only did the power denied exist, but that the refusal to recognize this power and to accord the judgment effect, when asserted in a foreign tribunal, was a denial of due faith and credit within the constitutional inhibition.

It is next urged that the decree of the Minnesota court is not final, and that therefore the present proceeding is to be interpreted and considered as ancillary to a pending and undetermined cause in the courts of the State of Minnesota.

From this it is claimed that no such ancillary jurisdiction exists outside of the courts of the State in which the original proceeding is pending, and that the present bill must for this reason fail.

If this point presents anything of practical signification, the reasons adduced in its support have failed to impress themselves.

The object of the primary proceeding in Minnesota, as already sufficiently shown, was to render an account stating a decree of the debts and assets of the corporation determining the deficiency and apportioning the same against all stockholders in common.

This has been done, and the results thereof embodied in the decree of the local court establishing and rendering judgments for the amount of the indebtedness involved. In the same decree the assets of the corporation have been ascertained and the consequent necessity for contribution by stockholders. In the respects indicated, and so far as stockholders are concerned, even under the most technical forms of appellate procedure, such elements would constitute finality in the decree determining these substantial rights.

The suggestion that "fresh assets" might be discovered requiring a modification of this decree is so far problematical and remote as to require no serious consideration. As a matter of fact, it would require one million six hundred thousand dollars in value of "fresh assets" to modify the resulting conclusions here as respects the stockholders' liability and the necessity for its enforcement in the maximum amount.

We may, perhaps, in this connection be pardoned for suggesting that the element of "fresh assets" has played a part in the present proceedings in an inverse ratio to the discovery of "fresh technical points," opposed to the enforcement of the rights of creditors.

It is perfectly obvious that if the rights of creditors were to be postponed upon such remote and problematical considerations as those suggested their protection and enforcement would be rendered impossible.

It is sufficient to say that a court of equity invested with jurisdiction for administration in such cases has ample power to meet and deal with such contingencies, if they arise, and to protect the rights and interests of all parties involved.

It is further urged against the finality of this decree that the local court has retained jurisdiction for the purpose of finally adjusting the rights of the several parties. The necessity of this reservation, having regard to the character of the proceeding, is too obvious to require comment. The ultimate object is the administration and distribution of a fund to be derived from the enforcement of the decree, against many and diverse parties and in varied jurisdictions. The creditor interests have become parties to this composite proceeding, and it is essential for their protection and for

conserving the fund to be administered that the court should thus reserve jurisdiction in the premises.

It would be precisely as logical for a Minnesota stockholder, against whom personal recovery is adjudged by the decree, to deny its finality by reason of this reservation as it is for the non-resident to urge this ground.

As to the domestic stockholder, the decree is final, ascertaining his liability and rendering judgment accordingly. As to the foreign stockholder, the decree has finally ascertained the essential conditions to which his liability is referable. To the extent indicated, it is final as to both accordingly.

This disposes of the assertion that the proceeding is strictly ancillary, and therefore maintainable only in the Minnesota courts. The proceeding at bar is ancillary in the same sense that a suit by a receiver of a corporation, after assessment for unpaid capital by the courts of domicile, to recover from a foreign stockholder is ancillary to the main administration proceeding in which the assessment is made.

The principal administration is had to render available and distribute a fund to be collected from many and diverse jurisdictions. Every proceeding in furtherance of this object is in a sense ancillary, and it is immaterial in this regard whether the term be used in its strict or more general signification.

III.

RIGHT OF PETITIONER TO SUE AS RECEIVER.

This subject has been so fully discussed in our principal and supplemental brief in reply herein as to require the addition of little to what is there stated.

The question in this regard arises on the following sections of the Minnesota statute:

"SECTION 5906. The court shall proceed thereon as in other cases, and, when necessary, shall cause an account to be taken of the *property* and the *debts* due to and *from* such corporation, and *shall* appoint one or more receivers."

"SECTION 5907. *If* on the coming in of the answer or upon the taking of an account, it appears that such corporation is insolvent and that it has *no property* or effects to satisfy such creditors, the court *may* proceed without appointing any receiver to ascertain the respective liabilities of such directors and stockholders and enforce the same by its judgment as in other cases."

In the case at bar the record shows that the court did proceed to take an account of the property and debts due to and from the corporation—that is, in order to ascertain to what extent the stockholders should be held liable it was necessary to ascertain what property the corporation had—which property would include debts due to the corporation—and its value. This ascertainment resulted in a finding by the court that the value of this property was four hundred and forty thousand dollars, which was applied by the court towards the payment of the claims of the creditors which had been established, amounting to upwards of three million

dollars. Under this state of facts it became imperative upon the court to appoint a receiver in these proceedings to enforce the stockholders' liability, the language of the statute being, "and *shall* appoint one or more receivers."

The next section which we have quoted leaves it discretionary with the court whether or not a receiver shall be appointed in case the corporation is insolvent and has no property or effects to satisfy the creditors. So that conceding, for the purpose of the argument, that the facts in this case bring it within this section—that is, that it appeared (1) that the corporation was insolvent either upon the coming in of the answer or upon the account taken, and (2) that it had no property or effects to satisfy the creditors' claims—that is, that whatever property or effects it had was in the hands of the receiver of the corporation, to be disposed of by such receiver and not by the receiver in present proceedings, it was, nevertheless, discretionary with the court to appoint a receiver, and the court having exercised that discretion, the right to appoint a receiver under this section cannot be questioned. It will be noticed that the language in both of these sections with reference to the appointment of a receiver is very broad and does not limit the power of the court in designating the receiver's authority and duties, but leaves it very largely in the discretion of the court in appointing such receiver to clothe him with such power and authority as in the judgment of the court will best work out for the interests of the creditors, at the same time carrying out the general object and purpose of the action to enforce the stockholders' liability.

The supreme court of Minnesota recognized the right of the court to appoint a receiver under these sections (Harper

vs. Carroll, 66 Minn., 487) in a case like the one at bar, where the corporation was insolvent, had made an assignment, and its assets were being administered by the general receiver in the insolvency proceedings, when it said, "*The statute provides for the appointment of a receiver and this implies that his expenses may be recovered,*" etc.

IV.

Miscellaneous—Conclusion.

It is contended that the case of Harper *vs.* Carroll, *supra*, indicates the complicated character of the proceeding provided by the Minnesota law and the impossibility of effectuating its purposes in foreign jurisdictions.

Many of the purely technical suggestions of counsel here were evidently drawn from facts suggested by that case.

The liability and technical considerations thereto incident in that case arose under the peculiar statute of Minnesota relating to banking institutions, and is therefore wholly immaterial in the case at bar.

The remedial statutes in both cases were the same, and, in so far as that case settled general principals in this regard, it is pertinent and has been cited here.

The liability there was predicated on a statute continuing it for one year after transfer of the stock in favor of all existing creditors. As a result, the creditors and stockholders were perforce classified.

Here no such state of facts exists. The law extends the liability to all stockholders at the time of insolvency in favor of all creditors existing at that tine. For this reason no complication or classification is involved. The decree is for

the maximum liability. Its enforcement in full will not liquidate one-half the deficiency of assets.

The case is thus reduced to the simplest compass.

The remaining suggestions included in the brief under miscellaneous either present in different form substantially the same matters as those already considered or subjects of no practical significance, requiring no reply.

Respectfully submitted.

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No. 77.

Office Supreme Court, U.S.
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Sup. Brf. of Boutelle, Hale & Pincoffs for Petitioner

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 77

Filed Nov. 6, 1902.

WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION), PETITIONER,

vs.

EDWARD P. ALLISON ET ALS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

SUPPLEMENTAL BRIEF OF PETITIONER.

M. H. BOUTELLE,
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A. L. PINCOFFS,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

NO. 290.

WILLIAM E. HALE, as Receiver,

Petitioner,

vs.

EDWARD P. ALLISON, et als.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

SUPPLEMENTAL BRIEF OF PETITIONER IN REPLY.

The grounds of opposition to the right of the receiver to sue, have presented so many and varied technical forms in the case at bar, and others similarly situated, as to justify a brief supplement, by way of reply, upon this single question.

In Hale vs. Hardon, 89 Fed. Rep. 283-288, the Circuit Court held, that the question of right or standing accorded a foreign receiver, depended somewhat upon whether the proceeding was in equity or at law, the intimation being that a more liberal rule existed in this regard in the equitable than in legal tribunals.

In courts of law it was said that the cases present practically three classes of receivers: (1) Those who are true successors in

title; (2) those who have received, by voluntary assignments or by force of title acquired through involuntary proceedings in insolvency or otherwise, underlying support from the corporation itself; and (3) so-called receivers, deriving their authority exclusively from the judicial proceedings in which they are appointed.

As to the first two classes, it was conceded that subject to certain well-established exceptions, foreign recognition and standing would be accorded. The status of the third was held to be no higher than that of masters in chancery and the authority consequently confined within the limits of the jurisdiction of their appointment.

Subsequent to the reversal of this decision (Hale vs. Hardon, 95 Fed. Rep. 747), the question again arose in the same Circuit Court before the same judge, who took occasion to make certain additional observations thereon, as follows:

"Of course, if there were a statute of Minnesota, creating a right of action against corporate shareholders and vesting it, when created, in an official of the State, *or an officer to be appointed by the court*, or in any other person who would make avail of it for a remedial purpose, so that such right of action originated with, and first vested in, the person so named, there can now be no question that, under Article 4, Sec. 1, of the Constitution, requiring full faith and credit to be given in each state to the public acts of every other state, the courts in every other state would be bound to protect the right of action in behalf of, and also in the name of, the person in whom it was vested."

Hale vs. Tyler, 104 Fed. Rep. 757.

The inconsistency between these successive holdings is too clear to require comment.

Under the first announcement, the right is apparently predicated of succession to the title of the corporation, a theory which would absolutely deny the right of a receiver in cases involving stock liabilities, where these, as interpreted by the local law, were matters in which the corporation had no interest and in which no rights could be created by succession to corporate title.

Under the second, the feature of successorship to the corporation is apparently discarded, and in its place, as shown in the quotation *supra*, is substituted a rule which makes the right to sue, dependent upon, (1), a statute providing for the receivership, and (2), vesting, *in the first instance*, the right to sue in such receiver.

As thus stated, it will be apparent that in those states where, either by force of statute or rule of practice, the original proceeding can be instituted by creditors and the stockholders within the jurisdiction brought in, leaving the enforcement as to stockholders beyond the reach of the court's process to ancillary or auxiliary proceedings, no statute can be framed broad enough to invest a receiver with any rights, because *not so invested in the first instance.*

The qualification indicated in the later of these decisions was obviously made in enforced deference to the modern and liberal rule established in the cases of receivers of those states (notably Washington), wherein it is held that the right of creditors in the statutory liability is *impliedly vested* in the general corporate receiver, *as representing all creditor interests*, and, as such, is exclusively enforceable by such receiver, to be commented on hereafter.

Sheafe vs. Larimer, 79 Fed. Rep. 921;
Howarth vs. Ellwanger, 86 Fed. Rep. 54;
Howarth vs. Angle, 162 N. Y. 179;
Howarth vs. Lombard, 175 Mass. 570.

The decisions of the Circuit Court recited above were made in the District of Massachusetts.

Following these, the question was presented to the Supreme Court of Maine, in Childs vs. Cleves, 95 Me. 498, wherein the receivership was identical with that in the case at bar, the cause was at law, and the right of the receiver fully sustained.

After the rendition of the decision last indicated, which, according to every known and recognized principle of procedure, should be held to have settled the question for all tribunals in that state, petitioner presented to the Circuit Court for the District of Maine (the same judge who decided Hale vs. Hardon below and Hale vs. Tyler, presiding), a bill in equity against a distributee of the estate of a deceased stockholder.

Hale vs. Coffin (Mar. 5, 1902, not yet reported.) 51 N.E. Rep 874

In this case under the pretense of discussing the distinction between proceedings in equity and law, the Circuit Court took occasion to review its previous announcements upon the question, holding that if the pending proceeding had been at law, the decision of the Court of Appeals of that circuit (Hale vs. Hardon) would not be recognized, arising as did that case in the Massachusetts district, and that the decision of the Supreme Court of Maine

would not have been recognized as binding on the Circuit Court because in the latter's opinion it changed the established rule, and therefore within the principles announced by the Supreme Court in Burgess vs. Seligman, 107 U. S. 20 was not conclusive.

This review has been made not because the announcements of the Circuit Court are supposed to have established or applied any well defined rule, but rather to illustrate the stubborn resistance with which every step in the progress of the law along liberal lines and those consonant with reason and justice is opposed by unyielding technique and stereotyped dogma.

By such reasoning as that adopted in the cases reviewed, eliminating as it does, the principles which have actuated the courts in establishing and applying what may be termed the modern rule, regulating the right of receivers in foreign jurisdictions, an easy method is discovered for accomplishing the main purpose in view, viz.: enabling domestic debtors to repudiate and escape liability upon a concededly contractual obligation.

These cases are obviously negative in character, establishing as they do, nothing beyond a denial of right to assert and enforce the obligation. They are best classified amongst the obsolete precedents, which mark the course of progress and development of the law as respects the foreign enforcement of stock liabilities, all whereof are based on requiring as a condition to the enforcement, *something a little different from the facts actually presented.*

If we pause for a moment in considering the precise aspect of the question here under review, to propound the inquiry, "how and by whom should this liability be enforced," we are brought face to face with the anomaly arising from the application of the results announced in these decisions of the Circuit Court.

In answering the inquiry suggested, we must concede that neither the corporation nor the general corporate receiver have any right in the obligation in question, for this last is obviously a question of local law to be ascertained and interpreted in the light of local precedent.

We are perforce then reduced to one of three alternatives: (1) That the remedy provided by the local law is so far special and inconsistent with the principles of procedure generally accepted and obtaining in similar cases, as to be of no force and effect beyond the state of domicile; (2) That the right invested in creditors originally continues in such creditors and may neither be affected by statutory provisions providing for a receivership, nor

by a decree of chancery vesting the creditor rights in a receiver when the latter method is appropriate under established principles of chancery procedure; or, (3) That the receivership may be provided by statute or by a decree in chancery in such way as to expressly or impliedly vest in the receiver all the creditor rights so that the latter becomes, to all substantial intents and purposes, a quasi assignee or successor of such rights, or a trustee of an express trust, and, as such, fully authorized to sue.

A consideration of these alternatives will serve, in a measure, to clear up the question of the right of the receiver, which has been, by purely technical considerations, exaggerated into an importance wholly disproportionate to its actual significance.

I.

THE MINNESOTA REMEDIAL LAWS.

It is not proposed to review in any detail these statutes which have been fully discussed in our original brief. We have there shown correctly, as we believe, that these provisions are strictly equitable in their character and are so far identical with the rules of procedure prevailing in equity in similar cases, as to be not inaptly termed *declaratory.*

Under such circumstances it would be anomalous to contend that such statutes are so far *special* as to be limited in effect to the local jurisdiction. It would be far more consonant with both principle and authority to say that these provisions are of such a character as to demand recognition in every tribunal, and that, particularly in a court of equity, the rights thereby recognized and provided for would be enforced by some form of remedy upon the principle "that wherever there is a right, a remedy should be accorded for its enforcement."

This will dispose of the first alternative predicated of a special and unknown procedure embraced in the local law.

II.

CONTINUING RIGHT IN CREDITORS.

This alternative immediately suggests a number of subsidiary inquiries. If the right continues in creditors, who shall be made parties, plaintiff or complainant, in the suit or proceeding for its enforcement?

It is necessarily conceded that the rights of all creditors are common, equal and referable to the conditions prescribed by the local law. Without compliance with the conditions thus imposed, no creditor has any right in the fund to be derived from the enforcement of the liability. The right of creditors in the premises embraces all who become parties to the original proceeding in compliance with the requirements of the statute, and if it continues in creditors, it is necessarily continued equally as to, and for the benefit of all.

The defendants assert, and the lower court affirms the existence of an adequate remedy at law. Should seven or eight hundred creditors, then, join as parties plaintiff in each of forty-seven different actions at law against a single stockholder?

If all need not thus join, may some, less than all, proceed on behalf of all? Can any rule be found *in law* recognizing the latter procedure?

If some may proceed in behalf of all interested, who shall determine upon those who may thus take the initiative?

Is it a race of diligence to get control of the auxiliary proceedings, or is authority invested in some tribunal and somewhere which shall designate the particular parties less than all, who may thus be permitted to bring forward and represent the common right?

If the latter supposition be accepted, would it not be consonant with established rules of procedure to assume that the supposed authority should emanate from the court of primary jurisdiction? If this be assumed (and without it no uniformity of administration can be conceived of), what substantial reason can be suggested why it should not designate in lieu of some less than all the creditors, to represent all, a receiver who should similarly represent all, to thus prosecute the auxiliary proceedings?

Assuming further the continuing right in creditors, is not such right, when submitted to the cognizance of the court (invested in the first instance, under the statutes to which the right is referable, with exclusive primary jurisdiction), subject to be acted upon and affected by the court's decree so as to effectually bind all creditors in interest?

If, therefore, that court designates by its decree to which all creditor interests are parties, a receiver, and invests in that receiver a capacity and authority to sue in behalf of and as representative of all those creditor interests, is not its decree as binding in this as in any other respect?

Put in another form, after such decree, assuming that the rights of creditors in the absence thereof, would be a continuing one, could any or all creditors join in its enforcement, or would they not rather be estopped and precluded in this regard by the provisions of the decree in this respect?

The situation presents two antagonistic interests, creditor and stockholder. If the interest of the former has been so far invested in a receiver as to estop its assertion by the creditor interest in any other manner than through the receiver, and the creditor acquiesces therein, what question of importance is presented when the stockholder interest attempts to question the receiver's authority, and thus, in effect, collaterally assail the decree of appointment?

What interest of substantial character in view of the existing relations does the stockholder have in this question?

Is it of any substantial purport as to him? Has it in anywise affected in any substantial particular his obligation?

In all the numerous forms in which this objection to the capacity of the receiver has been heretofore raised, as well as the opinions which have suggested lack of capacity in the receiver to sue, the inquiries thus suggested have still to be answered. These inquiries are obviously practical, and unless the argument and decisions heretofore advanced and rendered in opposition to our claims are predicated, as we assert, simply on finding some method to defeat the enforcement, have fairly demanded an answer.

The failure in this regard either arises from inability to suggest any substantial or practical solution of the questions, or from a studied attempt at sacrificing substance for form, with the refusal of recognition to those practical considerations which have actuated the great majority of courts under similar circumstances.

The solution of these inquiries is believed to be neither technical nor difficult, if correct regard be accorded established principles. These last may be considered under the third alternative suggested above.

III.

RIGHT OF RECEIVER IN FOREIGN JURISDICTION.

Under this head it is not proposed to re-review the line of argument or authorities contained in our principal brief. It is, however, desired to make some additional reference to authorities not there

cited, and to refer incidentally to certain phases of objection which have been raised upon this phase of the inquiry.

A distinction has been heretofore claimed between what are termed statutory and judicial receivers, so far as the question of right in foreign forums is concerned, aimed at showing a superior standing in the case of the statutory, to that accorded the strict chancery receiver.

This distinction has been sought to be sustained on the assumed fact that the statutory receiver, whether resulting from the voluntary assignment or transfer by the assignor, or by order of the court made pursuant to statute, is invested by force of the statute with title to the interests to which he succeeds, whether these be corporeal in character, or incorporeal, as mere choses in action.

On the other hand, it is claimed that no title devolves by succession upon the receiver of a court of chancery; that he is a mere custodian, as it were, the arm of the court to hold possession as the representative of the court itself, pending the litigation, as defined in Union Bank vs. Kansas City Bank, 136 U. S. 223, in the following language:

"The utmost effect of his appointment is to put the property from that time into his custody, as an officer of the court, for the benefit of the party ultimately proved to be entitled, but not to change the title or even the right of possession in the property."

Similarly, Porter vs. Sabin, 149 U. S. 473-479, wherein this court said:

"When a court exercising jurisdiction in equity, appoints a receiver of all the property of a corporation, the court assumes the administration of the estate; the possession of the receiver is the possession of the court; and the court itself holds and administers the estate, through the receiver as its officer, for the benefit of those whom the court shall ultimately adjudge to be entitled to it."

An examination of the cases thus quoted will show that the language had special reference to the particular facts there presented and that the conclusion sought to be drawn therefrom as respects the power of a court of chancery is wholly unjustifiable.

In the first of these cases, the question of the status of the receiver was purely incidental. Members of a firm had executed a deed of trust for the benefit of creditors. Simultaneously, at the behest of one of the partners, a receiver was appointed for the firm. The latter proceeding was claimed to have effected a modification of

the deed of trust and to have made it the equivalent of an assignment for the benefit of creditors. This court denied the result thus contended for and in this connection used the language quoted.

Porter vs. Sabin, supra, was equally remote from establishing what has been claimed for it in this regard.

Nothing in the opinion indicated, or was intended to indicate, a limitation on the jurisdiction of a court of chancery as respects investing, in a receiver, by force of its decree, title and right so far as was essential to carry out and effecuate the objects of the suit. On the contrary, the other view was clearly indicated from the following language (p 479):

"It may direct claims in favor of the corporation to be sued on by the receiver in other tribunals, or may leave him to adjust and settle them without suit, as in its judgment may be most beneficial to those interested in the estate."

The claimed distinction between so-called statutory and judicial receivers, as applied to corporations generally, is of comparatively small significance. Under nearly all statutory systems relating to corporate insolvency, courts of equity are invested with jurisdiction to appoint receivers. While these receivers derive their authority immediately from the decree of appointment, the creation of the office, as well as the decree itself, is primarily ascribable to the statutory enactment, and the receivers themselves are, in consequence, to all practical intents and purposes, statutory receivers. While such statutory systems generally prevail, it is not to be inferred that the jurisdiction of chancery is exclusively dependent thereon, or may not be invoked in the absence thereof, to effectuate all the purposes ordinarily contemplated by the statutes themselves.

As said by this court in Davis vs. Gray, 16 Wall. 203, 219:

"In the progress and growth of equity jurisdiction, it has become usual to clothe such officers with much larger powers than were formerly conferred. In some states they are by statute charged with the duty of settling the affairs of certain corporations, when insolvent, and are authorized expressly to sue in their own names. As regards statutes, we see no reason why a court of equity, in the exercise of its undoubted authority, may not accomplish all the best results intended to be secured by such legislation, without its aid."

Similarly, it has been said by certain recent commentators on the subject of corporate receiverships:

"It has been clearly held in well considered cases, that aside from the statutory provision, a receiver appointed by a court of equity, by virtue of his appointment, takes title to the personal estate, at least of an insolvent corporation."

Gluck & Becker, Rec'rs on Corp. (2nd Ed.), P 16.

Eliminating the contractual feature involved in this inquiry presented in our principal brief, it is believed that a foreign decree has as much extra-territorial force and effect as a foreign statute, and that the recognition extra-territorially of receivers appointed under the one or the other is neither dependent upon nor referable to this distinction in the origin of their authority.

We have claimed heretofore and still claim, that if any reason exists for a supposed distinction and any higher right is accorded to the statutory than a purely judicial receiver, the question is largely immaterial in the case at bar, because the appointment and character of the receiver here is referable to the local statute and the receiver himself, as a party, is entitled therefore to the status and recognition of a statutory officer.

This claim has been sustained by the decision of the Circuit Court of Appeals of the First Circuit in Hale vs. Hardon, supra, and questioned in a later decision by the Circuit Court of that circuit in Hale vs. Tyler, supra. The decision of the Circuit Court of Appeals has already been quoted on our principal brief and needs not to be referred to again.

Confining ourselves to the position assumed in Hale vs. Tyler, the denial of the statutory character of the receiver in the case at bar is predicated of the language contained in the local statute, Sections 5906, 5907, as follows:

"The court shall proceed thereon as in other cases, and, when necessary, shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers."

"If on the coming in of the answer or upon the taking of any such account, it appears that such corporation is insolvent, and that it has no property or effects to satisfy such creditors, the court may proceed without appointing any receiver to ascertain the respective liabilities of such directors and stockholders and enforce the same by its judgment as in other cases."

The conclusions sought to be deduced from these sections are thus expressed by the court in Hale vs. Tyler, supra:

"This provision has special application to the case at bar, because by prior proceedings, the assets of the corporation had been sequestered by the courts in Minnesota, and the suit which furnished the basis of Hale vs. Hardon and of the present action was a bill brought by a judgment creditor, in behalf of himself and other creditors, for the purpose of enforcing the liability of the stockholders, and for no other purpose. Therefore, as there were no assets of the corporation the title to which could vest in a receiver, and as the right of action against stockholders, according to the findings of the District Court, vested in the judgment creditor who filed the bill, and in the other creditors in whose behalf the bill was filed by him, and as, by the express terms of section 5907, already referred to, the court was not required to appoint a receiver, it followed that Hale was constituted such under the general equity powers of the court, and merely as its hand to assist it in realizing rights of action which vested, not in the receiver, but in the creditors."

This conclusion wholly eliminates the effect of local interpretation as evidenced by the Minnesota precedents and the construction adopted and applied in actual practice.

It assumes that, because the latter section of the statute quoted (5907) provides, in case the corporation is shown to be insolvent and has no assets, the court *may* proceed without appointing a receiver, it necessarily follows that the provisions of the former section (5906), providing that the court may appoint *one or more receivers*, is confined in its application to the general receiver of the corporation.

The answer may be sufficiently demonstrated by reference to the context of the statutes themselves of which the sections quoted form part.

By Section 5897 of the same statute, provision is made for the appointment of a receiver of the corporation at the suit of any judgment creditor after execution returned *nulla bona*. By Section 5902, further provision to the same effect is made, coupled with the authority to the court to appoint a receiver *of the corporation* at any stage of the proceedings.

Sections 5905, 5906 and 5907 have special reference to the proceeding primarily instituted for the enforcement of the stockholders' liability and the provision therein contained that the court "*shall appoint one or more receivers*," interpreted in the light of the context of these sections, obviously includes a receiver for the enforcement of the stock liability. The provisions of Section 5907, to the effect that if the corporation appears insolvent and has no assets, the court *may* proceed without appointing a receiver, is to be construed

not as a limitation upon the jurisdiction or authority of the court in the premises, but rather as leaving it, as in the ordinary case, to the discretion of the court to determine whether the appointment of a receiver will or will not effectuate the ends in view. As thus construed, if all the stockholders' liability to respond were before the court as parties defendant, and the liability could be enforced and collected under the judgments rendered in the original proceeding, the court might proceed in its discretion, without the designation or appointment of a receiver.

But it has been said heretofore on argument that the Supreme Court of Minnesota have negatived the statutory character of the appointment in the following language, excerpted from Hanson vs. Davidson, 76 N. W. Rep., 254:

"There is nothing to prevent the prosecution after such decree is entered of an ancillary action in any other jurisdiction by the receiver appointed, to collect and distribute the fund arising from the stockholders' liability in the original action, or by any other party or person who may be appointed by the court for that purpose, against any stockholder who is not made a party to the original action, to collect from him the amount of his liability on account of the debts of the corporation for the benefit of all creditors." (p. 256.)

It will be seen by reference to the opinion from which the excerpt quoted is taken, that the precise question here involved, to-wit, whether the statute expressly contemplated the appointment of a receiver by the court in the stockholders' suit, was not involved in that case.

The court clearly indicate the propriety of the appointment of a receiver for the purpose of instituting the auxiliary proceedings against stockholders omitted from the original suit and the statement that such auxiliary proceeding might be had by the receiver, or by any other party appointed by the court, would indicate that under the statutes referred to the trial court was possessed of discretion to either designate a receiver and invest him with authority to sue, or to direct such proceeding to be had and taken by some party creditor to the original cause.

In Harper vs. Carroll, 69 N. W. Rep. 610, 618, arising under the Banking Statutes of Minnesota, and involving the same remedial statutes as those in question in the case at bar, the precise point was, however, presented on an objection to the allowance in favor of creditors of the costs and expenses incident to the special receivership. In that case, the Supreme Court of Minnesota say:

"Some of the appellants contend that while the creditors are entitled to recover the amount of their claims, with interest and statutory costs and disbursements, from the stockholders, the latter cannot be required to pay any additional amount of costs and expenses. We cannot so hold. *The statute provides for the appointment of a receiver* and this implies that his expenses may be recovered," etc.

In the case of Zieverink vs. Kemper, 34 N. E. Rep. 250, the question of right to appoint a special receiver in an action to enforce the stock liability, came before the Supreme Court of Ohio under the statutes of that state, which, at the time the decision was rendered, were somewhat similar, but less comprehensive than those under consideration. In that case it was urged that the court was without authority to appoint such a receiver.

Answering this objection, the Supreme Court say:

"We think there is abundant authority in the statutes for the appointment of a receiver in an action to collect the statutory liability of stockholders, and that such is the usual and better practice. But the judgment against the several stockholders should be rendered in the original action brought by a creditor or stockholder as provided in section 3260, Rev. Stat. Such an action is equitable in its nature, and the statutory liability of the stockholders is a trust fund inuring to the equal benefit of all the creditors of the corporation, and this fund is made up from different amounts of money, to be collected from many different stockholders, and to be distributed among many creditors, and no one creditor is more interested in the collection than another. As no preference can be obtained by diligence no one would be specially interested in prosecuting suits for the equal benefit of himself and others; and in such cases it is the usage of equity to appoint a receiver to collect and distribute the fund under the order of the court for the equal benefit of all the creditors. The fact that the right of action is given by statute makes it none the less an equitable action, and, being an equitable action in its nature, requiring the service of a receiver, it is one of those in which receivers have heretofore been appointed by the usage of equity, as provided in section 5587, Rev. Stat."

By reference to the statutes there referred to, it will be found that the statutory authority there held to exist was not contained in the statutes relating to the enforcement of this particular liability, except as such power might be inferred from the general purposes and objects contemplated by the act. The express statutory authority was found in the general provision of the statutes of that state, providing for the appointment of receivers, and amongst oth-

ers, specifying that such appointments might be made "after judgment to carry the judgment into effect."

A similar argument might be predicated with special force of the general statutory authority invested in the courts of Minnesota, with reference to the appointment of receivers as shown by Title 12, Section 5351, Gen. St. 1894, as follows:

"A receiver may be appointed:
"Second. After judgment to carry the judgment into effect.
"Fourth. In the cases provided by law when a corporation has been dissolved or is insolvent.
"Fifth. In such other cases as are now provided by law, or may be in accordance with the existing practice."

In view of these considerations, were it necessary to establish the statutory authority of the local court, the conclusion could be successfully predicated of any one of the following grounds: (1) That the statutes embracing the remedial provisions provide expressly, or by necessary implication, for such appointment; (2) That such provision is made under the general authority to appoint receivers after judgment to carry the judgment into effect in view of the specific provision contained in the remedial statutes that the judgment shall be enforced as in other cases, and (3) That the appointment is clearly within the scope of the powers ordinarily exercised by courts of chancery and is thus expressly conferred by statute in the general provision above quoted, extending the authority of the court as respects such appointments to all the several cases as "are now provided by law or may be in accordance with the existing practice."

But this is believed to be unnecessary as sufficient warrant and authority is found in the statutes expressly applicable to the enforcement of the stock liability.

If the provisions of these statutes were otherwise ambiguous, that construction would naturally be preferred which would more nearly effectuate the purposes in view. It is to be assumed that the legislature contemplated investing the court with the fullest jurisdiction requisite to carry out the obvious purposes of the statute. In consequence, if the designation and appointment of a receiver in the stockholders' suit furnishes the most effectual and appropriate method of accomplishing these purposes, the statute is entitled to a liberal interpretation in this regard and should be held to have contemplated such appointment unless such a construction is opposed to its express terms.

In conclusion upon this particular phase, all doubt in this respect should be resolved by the customary interpretation by the local courts of the provisions of their own statutes. While the cases in which this subject has been referred to in the Supreme Court are nominal in number, it has been the practice and has become an established rule in this regard, to appoint special receivers, with authority to sue, under and by virtue of the provisions of the statutes referred to, and it can now be said without fear of contradiction, that such is the established usage and practice in the courts of that state.

This brings us then finally to the precise question whether such receiver is entitled to recognition and standing in a foreign tribunal.

It has been asserted as one ground of objection to according standing and recognition, that the receiver has no title; that he is neither the assignee of the claims of creditors, or of the right of action incident to such claims.

This objection overlooks (1) That the proceeding is purely statutory and the rights and obligations of all parties referable to those statutes; (2) That the creditors, being parties to the proceeding, are bound by the decree investing in the receiver under and by virtue of the provisions of the statute, the right to proceed to render the judgments obtained by creditors available, and (3) The creditors being thus bound, if it be held that the receiver cannot enforce the liability, it follows, as held by the Supreme Court of Maine in Childs vs. Cleves, 50 Atl. Rep. 714, that there is no one who can maintain the requisite action for its enforcement.

Eliminating these considerations for the present, is it true that technical title or formal assignment are essential prerequisites to suits by receivers respecting the subject matter of the trust confided to their administration?

By reference to the adjudicated cases it will be found that receivers occupy a dual capacity. In the one they succeed to the rights and interests of the defendant in the property confided to their charge; in the other, they occupy an entirely different status as *quasi trustees representing the common interests of creditors.*

Thus it has been stated:

"As a rule, the power of the receiver to sue is limited to the rights of the person or corporation over whose property he is receiver. * * * To this rule there are the following exceptions: (a) Where the receiver by force of some statute *is made the representative of creditors:* * * * (c) Where the receiver is appointed

in a proceeding carried on by creditors, in which the receiver is the representative of the creditors alone and for securing whose claims he is appointed."

Smith on Receiverships, sec. 70, p. 156;
High on Rec'rs, 3rd Ed., sec. 320.

The familiar class of suits by receivers to set aside fraudulent conveyances is an illustration of the exception noted. The right in this regard is clearly accorded not as a successor in title to the assignor or insolvent, on the one hand, or, as a successor in title to the claims of creditors on the other. Such proceedings are predicated upon the theory that the receiver in his person *represents* all creditors in interest, and in his person brings forward and asserts the rights of such creditors.

As a further illustration bearing more closely on the questions presented in the case at bar, attention may be called to the stock liability imposed by the laws of the State of Washington. By some decisions in foreign tribunals this has been held a corporate asset. By reference to the decisions of that state it will be found that such is not the fact, on the contrary, that the liability is held to appertain exclusively to creditors and the authority in the general corporate receiver to sue therefore, is held to accrue by virtue of the fact that he *represents* all creditors in interest.

Wilson vs. Book, 43 Pac. Rep. 939.

This representative character and capacity is purely the result of judicial interpretation, based on grounds of obvious convenience, with the view to effectuating the purposes of the law, and this without regard to any technical title or formal succession by assignment or otherwise.

In the case of Howarth vs. Lombard, 56 N. E. Rep. 888-891, the Supreme Court of Massachusetts said as follows of such a receiver:

"The remaining question is whether an action upon the liability so determined can be maintained by the receiver in his own name. It has been held that an ordinary appointment as receiver, made in another state, will not enable the appointee to sue in this commonwealth in his own name. Wilson vs. Welch, 157 Mass. 77, 31 N. E. 712. If he has a right of property as assignee, he may maintain an action. Iron Co. vs. Webster, 163 Mass. 134, 39 N. E. 786; Ewing vs. King, 169 Mass. 97, 47 N. E. 597. Under a recent statute, an assignee of an ordinary chose in action may sue in his own name.

St. 1897, chap. 402, sec. 1. The tendency is towards greater liberality in this respect. Buswell vs. Supreme Sitting of Order of Iron Hall, 161 Mass. 224-229, 36 N. E. 1065, 23 L. R. A. 846. In the present case the receiver is called by the court in Washington a 'quasi assignee for creditors.' He is charged with the administration of a trust fund which does not take form nor come into actual existence until after his appointment, and he is the only person who can collect it. By virtue of his official relation to the corporation and its creditors, he is the owner of the legal title to this fund, as a trustee for the creditors."

See also Howarth vs. Angle, 162 N. Y. 179, supra.

The same principle was clearly expressed by the Supreme Court of Pennsylvania in Cushing vs. Perot, 175 Pa. 66, as follows:

"A receiver represents, not only the corporation, but all its creditors; and, as to the latter, it is his duty to secure all the assets available for their payment. For this purpose he succeeds to their rights, and has all the powers to enforce such rights that the creditors before his appointment had in their own behalf, even though such powers be beyond those which he has as the representative of the corporation alone. As each creditor may sue, the right is equal in all, and common to all; and hence the receiver, who represents all alike, is the proper party to assert the common right and pursue the common remedy for the common benefit. * * * This is so consonant with convenience and natural justice, as well as with our own settled procedure in analagous cases, that we will not be easily moved to depart from it."

See also Gluck & Becker on Rec'rs., secs. 43-44.

In view of the principles thus established from grounds of obvious convenience and *a fortiori* where reinforced by statutory provisions, the power and authority of a receiver in the representative capacity indicated to sue in behalf of creditors, without regard to title or succession, is clear.

To satisfy purely technical considerations, it has been held in some cases that such title as was requisite to fulfill the requirements of the trust, would, under such circumstances, be supplied by legal intendment.

Wilkinson vs. Rutherford, 49 N. J. L. 241;
Merchants Bank vs. Steel Co., 57 N. J. L. 336.

This is conceived, however, to be a wholly useless form.

It has been urged, however, that notwithstanding the Minnesota statute contemplates and provides for such a receiver, it does not expressly authorize suit to be brought by him.

In this respect no purpose can be conceived for the receiver in the absence of the power thus questioned.

The case therefore falls within the rule thus stated, "but to warrant them in the exercise of a power, it need not be expressly conferred, and if it can be fairly implied, either from the general scope and purpose of the statute, or as an incident to a power expressly given, there is sufficient warrant for its exercise."

High on Rec'rs. (3rd Ed.), sec. 322.

But conceding all that is contended for in this regard by petitioner, it has been strenuously asserted before the courts that the receiver is still lacking in authority *to sue in his own name as receiver.*

This objection has been so fully met in the decision of the Circuit Court of Appeals of the First Circuit, in Hale vs. Hardon, 95 Fed. Rep. pps. 770-775, and of the Supreme Court of Maine in Childs vs. Cleaves, supra, as to require little, if anything, to be added to what is there said.

The principles and reasoning of these cases is confirmed by the decision of the Supreme Court of Massachusetts and the Court of Appeals of New York.

Howarth vs. Lombard, supra;
Howarth vs. Angle, supra.

Considered in its strictly technical aspect, it will be found that the cases on which this objection is predicated, all relate to questions where the right of the receiver is asserted by virtue of succession to the *title* or *interest* of a party to the cause.

Glenn vs. Marbury, 145 U. S. 499.

None of these cases involved the question of the receiver's right where predicated of his representative capacity. In the latter it is believed that in all cases where the receiver's rights are asserted as representative of all creditor interests, the suit is necessarily brought in his own name.

Vol. 17, Ency. Pl. & Pr., 814, and cases;
Vol. 20, Am. & Eng. Ency. of Law (1st Ed.), 287, Note 4.

But, however this may be in the ordinary case, where the representative character results from a statute which by express provision or necessary implication contemplates the exercise of the power, the authority is clear.

Vol. 20, Am. & Eng. Ency. of Law (1st Ed.), 234;
Smith on Receiverships, sec. 70, supra.

Moreover, as respects corporations wherein the rights of all parties in interest are referable to the several laws affecting corporate organization, the right of the receiver therein contemplated, may be referred to and sustained upon the contractual principles sufficiently presented in our original brief.

In the foregoing we have attempted to review every form of objection or argument which has been presented upon this question in the varied litigation heretofore had in the courts in these cases.

The character and status of a statutory receiver is, of necessity, largely a question of local law.

If this be not the rule, it follows that the receivership which is an incident to a local statutory proceeding framed for insuring uniformity of right, and binding as such upon all parties in interest, is subject to diverse and variant interpretation in the different jurisdictions and thus destructive of the primary purpose of the statute itself.

The legislature of Minnesota provided that the court shall appoint one or more receivers. This, as heretofore shown, has been held and construed by the local courts as a statutory authority for the appointment of the particular receivers of the class here in question.

Harper vs. Carroll, supra.

It has further been held as investing the court with jurisdiction to authorize its receiver to institute ancillary or auxiliary proceedings in foreign forums.

Hanson vs. Davidson, supra.

This construction comports with the obvious purpose of the statute, and the general rule followed by the courts of that state in respect both to the receivership contemplated thereby, as well as ordinary equitable receiverships.

The first is illustrated by Minnesota Threshing Mfg. Co. vs. Langdon, 44 Minn. 37-39, wherein the court say.

"The receiver has substantially the same powers and functions as an assignee in bankruptcy, or a receiver upon a creditor's bill, or proceeding supplementary to execution. He succeeds to the rights of the creditors as well as of the insolvent corporation. * * * The proceedings were intended to provide a full and complete remedy. * * * Everything becomes assets in his hands * * * which were assets as to creditors. * * * This right

of the receiver does not depend upon any express statute granting it. This is clearly contemplated and even expressly provided for in the various provisions of chapter 76 relating to such proceedings. * * * It cannot be that this right of the receiver and the right of creditors can both exist at the same time. If so, it would lead to the worst confusion and conflict, and often defeat the main object of sequestration proceedings under chapter 76. The right of the individual creditor and of the receiver were never intended thus to conflict."

The language thus quoted was used with reference to the general receivership contemplated under the statute in question, but its reasoning and spirit is equally applicable to those portions of the statute specifically limited to the special receiverships here involved.

In Henning vs. Raymond, 35 Minn. 303-305, the court say of equitable receivers in general:

"The receiver as an officer of the court which has taken control of the property, is, for the time being, and for the purpose of the administration of assets, the real party in interest in the litigation. There is no reason therefore why the suit should not be instituted in his own name."

The local construction and interpretation are in legal contemplation, part of the statute.

As part and parcel therefore of the general scheme of sequestration provided by the statute, his appointment was contemplated and such appointment is the necessary incident in giving force and effect to the purposes of the law.

In this view from whatever standpoin it be regarded, whether from principle or precedent, no doubt can exist as to the receiver's capacity to sue in foreign forums.

As a statutory officer, the subject has already been considered in our principal brief.

But without regard to this aspect, the weight of authority in favor of according standing, is so far persuasive as to absolve the question from doubt.

The conclusions thus announced were fully confirmed by the Circuit Court of Appeals for the Sixth Circuit, in Kirtley vs. Holmes, 107 Fed. Rep. 1-8. This was a suit brought by the receiver appointed under the Ohio statute in a suit there pending, to enforce the liability of stockholders. Answering the objection that such a receiver had no standing in a foreign jurisdiction, the court say:

"Nevertheless, the right being of an equitable nature, and prosecuted for the benefit of all the creditors, it is recognized that a receiver may be appointed if the case be one where the receivers are appointed by the usages of equity, as is specifically provided by section 5587 of the Ohio Revised Statutes. The action being for the benefit of all the creditors, and having been instituted upon that theory in the Ohio Court, which is to ascertain the amount to be assessed against stockholders, and the creditors entitled to the benefit thereof, we think it is in harmony with the usages of equity to appoint a receiver who shall, under the direction of the court, bring an action in order to bring into the fund sums arising from the liability of stockholders beyond the jurisdiction of the court. The cause of action exists in favor of all creditors. It may be impracticable to unite all in the bringing of the action. A court of equity, in the exercise of its power to appoint a receiver, may well appoint one for the purpose of reaching such outstanding liabilities. The right of such a receiver appointed in another jurisdiction to maintain an action has been recognized in many well considered cases. A receiver's right to sue is recognized upon principles of comity, where no injustice would be done to the citizens of the local jurisdiction, or his recognition conflict with public policy. Howarth vs. Angle, 162 N. Y. 179, 56 N. E. 489, 47 L. R. A. 725; Same vs. Lombard, 175 Mass. 570, 56 N. E. 888; Howarth vs. Ellwanger (C. C.) 86 Fed. 54; and Hale vs. Hardon, 37 C. C. A. 240, 95 Fed. 747."

The same principles were asserted and applied by the Circuit Court of Indiana (Burr vs. Smith, 113 Fed. 858), on objection to the capacity of a receiver appointed under the Ohio Statute, to sue in a foreign jurisdiction.

Passing thereon, Judge Baker said as follows:

"When a state by its statute creates a liability unknown to the common law, can it be successfully contended that it may not determine by whom, and in whose name, that liability may be enforced? The statute of Ohio invested the receiver, when duly appointed, with the right to maintain a suit to enforce the stockholder's liability for the benefit of the creditors of the corporation, and on what principle of justice or comity can the courts in a sister state refuse to permit the receiver to maintain an action, to enforce such liability? Such a receiver is something more than an ordinary chancery receiver appointed to take possession of the property and collect the debts owing to a corporation or an individual. The present receiver was appointed to enforce for the benefit of creditors liabilities to which the corporation had no right or title. Formerly the primary object of a receiver's appointment was to preserve the fund or property so that it might be appropriated as the final decree of the court should direct. In recent times, how-

ever, both in England and in the United States, there has been a strong tendency towards enlarging the scope of the receiver's powers. The general rule as to receiver's title is greatly modified in the case of a receiver appointed at the suit of judgment creditors. In such cases he is appointed, not alone for the purpose of preserving the property, but also to reduce property and effects into possession, and to distribute the proceeds among the creditors. Hence the receiver is usually given authority to maintain suits in his own name to enable him effectively to carry out the purpose of his appointment."

After referring to expressions contained in certain cases denying recognition to receivers in foreign jurisdictions, the court continues:

"But expressions of this character have been considered to go too far, and the correct and current doctrine appears to be that under the principle of comity the courts of one jurisdiction will recognize the authority and permit the exercise of the functions of a receiver appointed in another jurisdiction, except in those cases where a court of the former jurisdiction finds that its own policy would be displaced or the rights of its own citizens invaded or impaired, and this seems to be especially true where such receiver is, by the terms of his appointment, to gather in the assets wherever found. 20 Am. & Eng. Enc. Law (1st Ed.) 65, 66. The doctrine thus stated is supported by reason and by the great weight of authority in the courts of the United States. The nature of the union between the states as members of a common government, the intimate and vital interests and relations, commercial as well as political, which bind them together, should lead to a greater degree of comity between them than would be expected to exist between states wholly foreign to each other. This principle of comity between the states of the Union is now generally recognized."

The court next considers the case of Booth vs. Clark, 17 How. 322, and shows that the facts presented in that case have no bearing upon, and the decision there rendered is not an authority against the conclusions announced by it, citing Insurance Co. vs. Schultz, 80 Fed. Rep. 337; Hale vs. Hardon, 95 Fed. Rep. 747; and Kirtley vs. Holmes, 107 Fed. Rep. 1.

The modern trend of authority sustaining the rule of comity will sufficiently appear from the following:

"Conceding that the officer is vested with this fullness of authority, it would appear to be in harmony with those legal principles by which the intercourse of foreign states is regulated that every government, when its tribunals are appealed to, shall render

every assistance in its power in furtherance of the execution of such authority, except in those cases where, by so doing, its own policy would be displaced, or the rights of its own citizens invaded or impaired."

Gluck & Becker on Receivers (2nd Ed.), 223.

"It is thus apparent that the exceptions to the rule denying to receivers any extra-territorial right of action have become as well recognized as the rule itself, and the tendency of the courts is constantly toward an enlarged and more liberal policy in this regard. And it is believed that the doctrine will ultimately be established giving to receivers the same rights of action, in all states of the Union, with which they are invested in the state or jurisdiction in which they are appointed."

High on Receivers (3rd Ed.), 211.

"Generally, however, a foreign receiver is allowed to carry on litigation if the interests of resident creditors are not injured, and if justice will be promoted by sustaining his suit."

Vol. 3, Cook on Corp. (4th Ed.,) sec. 869.

"At an early period of our American jurisprudence, when the tribal theory—the theory of a mere league of independent sovereign states—as uppermost in the minds of judges as the theory of the relation of the American states *inter sese*,—it was seldom, if ever, that a receiver appointed in one state was permitted to maintain an action in the courts of another state. * * * The tendency is more and more to respect each other's laws and judicial proceedings, and to enlarge the principle of comity, which gives effect to them. * * * As between sister states of the American Union, the principle now generally acted upon is, that a receiver, appointed in another state, will be permitted, on the principle of comity, to bring an action in the domestic forum, * * * when so to do will not contravene the rights of citizens of the domestic state."

Vol. 6, Thompson on Corp., secs. 7337-7339.

See also,
Buswell vs. Order Iron Hall (Mass.), 23 L. R. A. 846;
Boulware vs. Davis (Ala.), 23 L. R. A. 601;
Ins. Co. vs. Wright (Vt.), 55 Vt. 526;
Cook vs. Orange (Conn.), 48 Conn. 401;
Hunt vs. Gilbert (Ill.), 54 Ill. App. 491;
Weil vs. Bank (Mo.), 76 Mo. App. 35;
Bank vs. McLeod (O.), 38 O. St. 174;
Hurd vs. Elizabeth (N. J.), 41 N. J. L. 1;
Stoddard vs. Lum, 159 N. Y. 265-276.

In the foregoing review the purpose has been to bring to light and answer all the varied, abstract and technical theories which have been urged upon the courts in these cases, in opposition to the right of the receiver to sue.

The narrow, illiberal and unsubstantial character of all these objections cannot fail to impress itself upon the mind of the court.

We have called attention to the fact that none of these objections or decisions made sustaining the same have in anywise suggested, in what manner or by whom, this contractual liability should be enforced in foreign jurisdictions.

The dividing line in these cases is strongly marked between those on the one hand, which apply a broad, liberal and just interpretation of the statutory obligation with the rights thereby created, and as thus construed have sanctioned a remedy which fully comports with the spirit of the statutes and subserves the rights of those claiming thereunder. On the other hand will be found a strained and studied attempt to ignore liberal rules and defeat the obvious intent of the statutes.

The one line of decisions is indicative of a spirit of harmony in the intercourse between the citizens of the various states and is illustrative of the spirit of comity which, in these days, with the tendency toward corporate organization in all lines of business, is absolutely indispensable. The other is the exact reverse,—illiberal, non-progressive and obstructive.

As between these two, it is not difficult to conceive which, in the long run, is inevitably bound to prevail.

Respectfully submitted,

M. H. BOUTELLE,
For Petitioner.

WILLIAM E. HALE,
CHARLES C. LISTER,
A. L. PINCOFFS,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1902.

No. 77.

WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION), PETITIONER,

vs.

EDWARD P. ALLISON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

APPLICATION FOR REARGUMENT.

Now comes the above-named petitioner and respectfully petitions this honorable court for a rehearing of the above-entitled cause for the following reasons, to wit:

1. Because of misinterpretation and misconception of the local law of the State of Minnesota, as indicated and established in the decisions of the supreme court of that State, cited and relied upon in the opinion of this honorable court in the case at bar.

2. Because of misconception in matters of fact bearing upon and decisive of the interpretation and meaning of the local law of Minnesota, as interpreted by the decisions of the supreme court of that State, cited and relied upon in the opinion in the case at bar.

3. Because the erroneous construction and interpretation of the local law of Minnesota in the particulars above mentioned has been made the basis of the decision of this court in this cause adverse to your petitioner.

This petition is made and presented upon the grounds hereinbefore specified, supplemented by the statement and accompanying argument hereto annexed, referred to, and made a part hereof.

And your petitioner prays that an order may be made for a rehearing of the argument in this case on a day to be appointed by the court and upon such points as the court may direct.

W. E. HALE AND
M. H. BOUTELLE,
Attorneys for Petitioner.

I hereby certify that I have examined the foregoing petition for rehearing, with annexed statement and argument, and that the same is presented in good faith, and that I believe the same to be based on meritorious grounds.

JAMES K. REDINGTON, *Counsel.*

STATEMENT AND ARGUMENT.

Before discussing the several grounds above specified, a brief statement of the condition of this litigation and the reasons rendering this application almost imperative may not be out of place.

This suit was instituted *in equity* by petitioner against a number of stockholders of an insolvent Minnesota corporation residing in Pennsylvania to recover a statutory stock liability. After a decree dismissing the bill in the circuit court, affirmed by the circuit court of appeals for the third circuit, application for *certiorari* was made and granted by this court.

The questions involved were three: (1) The right of enforcement of the liability in foreign jurisdictions, (2) the right of the petitioner as representative of creditors to maintain the suit, and (3) jurisdiction in equity.

Pending the determination of this cause, there was instituted by petitioner, in the circuit court for the northern district of New York, *an action at law* against one Hilliker, to recover the same statutory liability. Judgment in favor of petitioner in that case in the circuit court was reversed by the circuit court of appeals of the second circuit upon two grounds: (1) Denial of the receiver's right to sue, and (2) the application of a special statute of limitations of the State of New York. Application for *certiorari* was thereupon made to this court, and the same held under advisement pending the decision in the case at bar. The holding of this court denying the right of petitioner to sue disposed of that question in the Hilliker case, and resulted in a denial of the application.

In various of the circuit courts judgments have been rendered and are presently outstanding in favor of your petitioner as receiver in similar cases (except that the proceed-

ings have been brought at law), aggregating approximately $200,000, all whereof are pending on writs of error.

Other causes pending in various of the circuit courts undetermined, brought by your petitioner at law, would increase this total by approximately $100,000.

These sums are exclusive of the claims involved in this case against stockholders in the Commonwealth of Pennsylvania, and the Hilliker case, involving over $75,000.

The fund contemplated in these liabilities is the only substantial asset for the creditors involved in this most unfortunate insolvency. This asset has been practically wiped out by the decision of the purely technical question of the right of the receiver to sue.

At the time this litigation was inaugurated the law relating to the foreign enforcement of liabilities of this class was surrounded with almost every phase of doubt and uncertainty. For six years the creditors, proceeding through the receiver, petitioner here, have constantly pressed the determination of the ultimate questions involved. The resulting decisions have been inharmonious in an almost unparalleled degree. At the expiration of this time, with the probable intervention of the statute of limitations, the denial of the right of creditors, on the technical ground of the right or capacity of the receiver to sue, is a practical denial of any and all relief.

If the situation were merely one of alternative or substitution of remedies or forms of procedure, the question would be fraught with far less significance. As the matter stands, for reasons hereinafter explained, this is not the fact, and if the decision of this court shall be ultimately adhered to, as regards the right of the petitioner as receiver to sue, no effectual remedy for the creditors of this insolvency will remain.

The far-reaching consequences of the present decision furnish ample justification for the presentation of this application.

While considerations based upon the situation of a particular litigation may not of themselves present reasons for invoking a reconsideration at the hands of the court, and while the unfortunate condition of the creditors in this insolvency may not be sufficient to justify relaxing ordinary rules of procedure, they may and should justify the court in exercising the discretion which it possesses, and in reconsidering a question which has been and is in a state of utmost confusion when a comparison of the Federal and State decisions be had. Especially should this be true in a case where the decision of this court was based on considerations *of local and not general law*, and where, as will be presently shown, the local law was erroneously interpreted, owing to a misconception of the decisions of the local jurisdiction.

GROUNDS OF APPLICATION.

Misinterpretation of the Minnesota Court.

In disposing of the question of the right of petitioner to sue as receiver in the courts of a foreign jurisdiction, this court had recourse to the following Minnesota decisions:

Allen *vs.* Walsh, 25 Minn., 543.
Palmer *vs.* Zumbrota, 65 Minn., 90.
Minneapolis Base Ball Company *vs.* State Bank, 66 Minn., 441.
Hanson *vs.* Davison, 73 Minn., 454.

These decisions were reviewed and it was held that previous to the decision in Hanson *vs.* Davison, *supra*, the uniform construction of the local law, by the courts of Minnesota, had established that the receiver had no right to sue for the purpose of enforcing the statutory liability of stockholders.

This construction was held by this court to have been apparently modified in Hanson *vs.* Davison, but that case was

held not entitled to the consideration otherwise obtaining, because (1) whatever was said therein relative to the right of the receiver was obiter; (2) the decision was made subsequent to the insolvency in the case at bar, and (3) it did not expressly overrule the prior cases. This will appear from the following, quoted from the opinion of this court, at pages 6 and 8:

"Whatever was said in the opinion regarding the possible right of a receiver to maintain such an action as the one now before us, was not necessary to the decision of the case, and cannot be regarded as overruling the prior cases. The opinions in The Minneapolis Base Ball Company *vs.* Bank, and in Hanson *vs.* Davison, were written by the same judge, and in the latter case he does not refer to the earlier one decided but two years before, and which held that a receiver under the State statute could not maintain such an action as this" (page 6). * * * "We should not, therefore, be justified in following the remarks made in this case, in opposition to those cases, which had already been decided by the same court years before, and up to and including The Minneapolis Base Ball Company *vs.* Bank (*supra*), especially when it appears, as in this case, that all the facts had occurred prior to the declaration of the chief justice of the court" (page 8).

If these statements correctly indicated the status of the local law, we would readily assent to the conclusions announced.

Conversely, if the statements are erroneous, the conclusions are without support.

The decision of this court tacitly concedes that if Hanson *vs.* Davison were not opposed to the prior established rules, this court would be justified in according due weight to what was therein stated on this question of *strictly local import.*

That this court has misconceived the meaning of the Minnesota holdings, and that its misconception has resulted in an entirely unwarranted and erroneous interpretation of the local law may be readily demonstrated.

Hanson *vs.* Davison neither qualified, modified, or overruled any of the prior decisions referred to by this court. The receiver referred to in the cases cited by this court, antedating Hanson *vs.* Davison, *is not the same receiver at all as the receiver referred to in the Hanson case.*

By failing to distinguish two perfectly well-defined classes of receivers the entire substantive law as embodied in the legislative enactments of that State and their interpretation by the highest court thereof has been confused and misinterpreted by this court.

All the Minnesota cases cited, including Hanson *vs.* Davison, are in perfect harmony and accord, so far as the question of the right of a receiver is concerned, and no possible justification can be found for a contrary claim.

We may premise this assertion by the general statement that the receiver referred to in the several cases prior to Hanson *vs.* Davison was *the general receiver of the corporation.* The receiver referred to in the opinion of the chief justice in the Hanson case *was the special receiver* contemplated by the statutes of Minnesota to be appointed as the representative of creditors in the proceeding inaugurated *exclusively for the enforcement of the stock liability.*

These two receivers are entirely separate, both in matter of fact and law. They have no offices or functions in common. The property and rights available by one are in nowise available by the other. The receiver of the corporation, as referred to in the Minnesota cases previous to Hanson *vs.* Davison, was the general receiver appointed in insolvency or equitable sequestration proceedings for the purpose of administering the corporate assets and affairs.

In the cases antedating Hanson *vs.* Davison the question was presented whether *this general receiver* could sue to recover the statutory stock liability, and the rule was an-

nounced that the statutory liability of stockholders to creditors was a matter in which neither the corporation nor *its receiver* had any right or concern.

This is the settled rule of law in that State, and it follows and was held accordingly in all the cases cited that, having no right or interest in the liability in question, *the receiver of the corporation* cannot sue for its enforcement.

To the cases cited in the opinion of this court may be added Olson *vs.* Cook, 57 Minn., 552, wherein this point was also expressly passed upon. Petitioner, the receiver in the case at bar, *is not the receiver of the corporation*, and has no functions whatsoever appertaining to that office. Whatever of limitation upon the authority of such general receiver may exist, therefore, by force of the Minnesota decisions, is in nowise governing or determinative of petitioner's status or rights.

It is essential, in order to correctly interpret the meaning of the Minnesota decisions, to understand these separate and distinct receiverships. The one, the receiver of the corporation; the other, the special receiver *appointed in the creditors' suit exclusively for the enforcement of the stock liability.*

No case cited by this court previous to Hanson *vs.* Davison had any reference whatsoever to the special receivership in the stockholders' suit. Every one of those cases referred to the receiver of the corporation, and was confined to holding, in substance, that as between such receiver, on the one hand, and the corporate creditors, on the other, the right to enforce the stock liability was in the latter.

When we reach the case of Hanson *vs.* Davison the converse of the situation exists. In that case there was no question of the right of the general receiver of the corporation. It cannot, therefore, be held that Hanson *vs.* Davison overruled, modified, or was in anywise inconsistent with the previous cases. In the Hanson-Davison case the right of the receiver of the corporation was neither involved nor alluded

to at any stage of the case until the wholly irrelevant reference in the dissenting opinion.

In that case a receiver of the corporation had been appointed and had administered the corporate affairs as in the case at bar. There, as also here, the creditors had asserted their rights as against the stockholders in an equitable proceeding, which had gone to judgment, and to the appointment of the special receiver as an incident of that suit. In referring, as did the opinion of the Chief Justice of the court in that case, to the right of the receiver, reference was had solely to the only receivership which by any possibility could be involved in the stockholders' suit proper, viz., *the special receiver therein appointed.* This clearly appears from the following language quoted from the opinion of the Chief Justice in that case:

"There is nothing to prevent the prosecution after such decree is entered of an ancillary action in any other jurisdiction by *the receiver appointed to collect and distribute the fund arising from the stockholders' liability in the original action, &c.*"

As the "original action" here referred to is that instituted by the creditors to enforce the liability of stockholders (an action in which the receiver of the corporation has no right), it is clear that the language is susceptible of but a single interpretation.

The confusion indicated in the opinion of this court arises from a failure to distinguish between these two separate and distinct receiverships and an indiscriminate application of the precedents without regard to the distinction noted. The perfectly well settled construction of the statutes and practice adopted and applied thereunder by the courts of that State, if correctly interpreted and understood, will readily dispose of the confusion indicated.

At the risk, therefore, of some degree of repetition, we may be pardoned for a brief outline which will serve to

clear the atmosphere and demonstrate to this court that it has erroneously interpreted the local law, and has made this erroneous interpretation the basis of decision in the case at bar.

Under the laws of Minnesota three methods exist for liquidating the affairs of an insolvent corporation. First. By voluntary assignment for the benefit of creditors. This is simply a statutory adaptation of the statutes of Elizabeth governing common-law assignments. Second. By proceedings in insolvency, which may take on the form of voluntary or involuntary proceedings, the statute in this regard being in the nature of a local bankrupt act. Third. By what are termed equitable sequestration proceedings, as regulated by chapter 76, General Statutes of Minnesota, 1894.

All have one feature in common, viz., the administration of the assets and affairs of the corporation. The assignee under a voluntary assignment or in insolvency, the receiver appointed by the court in insolvency, or in the equitable sequestration proceedings, represents and succeeds by virtue of his office *to the rights and interests of the corporation.*

His succession, however, does not include any interest in the statutory liability of stockholders. The last is interpreted as strictly an asset belonging to creditors and as such enforceable by them and not by the receiver of the corporation.

OLSON VS. COOK, SUPRA.

As a result of this settled interpretation, *the administration of the corporate affairs and the enforcement of the stock liability by the creditors* are wholly distinct and independent proceedings.

The funds are separate and separately administered. The creditor interests may or may not be the same in both, depending upon the voluntary action of the creditors themselves in coming into one or both.

The suit to enforce the stock liability is inaugurated by the creditors themselves or by some in behalf of all, according to the established rules of equity proceedings. The corporation and stockholders within the reach of process are brought before the court, creditors are summoned by notices requiring intervention, an account is had and taken of the debts and assets, and the resulting ascertainments are embodied in the final decree in which is also adjudged the personal liability of the stockholders before the court.

HANSON VS. DAVISON, SUPRA.

At this point in what is termed the original proceeding to enforce the stockholders' liability, the requirement of the *special receivership in that suit*, and in order to effectuate the purposes thereof, first arises.

This receivership is confined in its objects and purposes to matters incident to the collection and enforcement of the stock liability. These propositions are perfectly well established and thoroughly understood in the local jurisdiction of Minnesota.

Notwithstanding this well-settled distinction, this court, referring to the line of decisions in Minnesota relating exclusively *to the general receiver of the corporation*, and holding that *such receiver* cannot sue to enforce the stock liability, states as *an established principle of local law* that the special receiver is denied the right to sue.

An analysis of the leading cases cited by this court, with certain others explanatory of the holdings therein, will serve to make the proposition herein plain.

Allen *vs.* Walsh, 25 Minn., 543, was the first case in that State containing any authoritative announcement of the nature and character of the stock liability. There was no question of receivership in that case.

A single creditor of an insolvent bank sued *a single stockholder* to recover the liability. Demurrer was interposed to

the complaint and sustained. In the course of its opinion the court explained that the liability was one intended equally for all creditors in common and to be enforced accordingly in equitable proceedings, as indicated by the provisions of chapter 76, General Statutes of Minnesota for 1866, this statute being the same as that now appearing in the compilation of 1894.

The sole question involved in that case, therefore, was whether a single creditor could enforce the liability in his own behalf against a single stockholder.

So far as that case held that no such right existed, that the rights of creditors were equal, and that they were to be enforced in proceedings for the benefit of all, it has remained and is the settled law of that State.

HANSON VS. DAVISON, SUPRA.

The provisions of chapter 76 referred to, as hereinafter shown, embrace proceedings to wind up the affairs of the corporation as well as to enforce the stock liability.

In Arthur *vs.* Willius, 44 Minn., 409, the proceeding was inaugurated by creditors under this statute to liquidate the affairs of the corporation. In that case a creditor intervened and filed a supplemental complaint to enforce the statutory liability of stockholders. This practice was sustained by the Supreme Court. This decision indicated what, in the absence of express authoritative announcement, had come to be accepted in practice, viz., that the right to sue for the stock liability appertained to the creditor, and could not be availed of by the receiver of the corporation. It remained, however, for later cases to expressly announce the rule.

In Olson *vs.* Cook, 57 Minn., 552, the question was set at rest, so far as proceedings inaugurated against the corporation in insolvency were concerned. In that case a receiver of the corporation had been appointed under the insolvent law of the State. Pending the administration in insolvency,

Olson, a creditor, filed his bill in behalf of himself and all other creditors to enforce the stock liability. The defendants pleaded another action pending, and contended, in support of the plea, that the liability was available in the insolvency proceeding. The plea was overruled, the court holding that the stock liability was not impounded in the insolvency proceeding; that it was not a corporate asset; that there was no machinery in the insolvent law for its enforcement, and, as a necessary conclusion, that *the only receiver provided by that law*, viz., the receiver of the corporation, had no right to sue. The remedy pursued by Olson in behalf of creditors, according to the provision of chapter 76, was held proper, notwithstanding the contemporaneous proceeding in insolvency *to administer the corporate affairs*. While the provisions of chapter 76 were recognized as embracing both classes of proceedings, viz., against the corporation to liquidate its affairs and against stockholders to enforce the stock liability, it was held that where the occasion for resorting to this statute for the former relief was precluded by proceedings inaugurated under the insolvent law, the remaining provisions relating to the enforcement of the stock liability were still applicable, and indicated the proceeding to be adopted by creditors.

This was the first definite and authoritative announcement relative to the right of a receiver, and here, as shown by the case, the receiver was *the receiver of the corporation in insolvency*.

This still left as an open question whether *the receiver of the corporation* appointed in proceedings under chapter 76 could sue in those proceedings to enforce the stock liability.

In Palmer *vs.* Zumbrota, 65 Minn., 90, this last question arose in the following manner: Palmer filed his bill against the corporation for the appointment of a receiver therefor under chapter 76. The bank made default, and a decree was entered confirming the appointment of the temporary receiver and making the same permanent. By the same de-

cree it was provided that the receiver (of the corporation) should sue the stockholders to enforce the stock liability. Subsequent to the decree, but before any action had thereunder, one Thacher, a creditor, applied to the court in the original proceeding for leave to file a supplemental bill bringing in stockholders to enforce the stock liability. Leave was granted, the supplemental bill filed, and notices given creditors to intervene.

Palmer, the original creditor, thereupon appeared and moved to vacate the order permitting the filing of the supplemental bill. This motion was denied. The defendant bank appeared and moved to vacate the judgment directing the receiver to sue the stockholders. This motion was also denied.

The stockholders demurred to Thacher's supplemental bill, amongst others, on the ground of another action pending brought by Palmer.

The several rulings were incorporated in a single appeal to the supreme court. The third appeal related to the receivership, and arose on the objection of the defendant bank to the portion of the decree directing the receiver of the corporation to sue. This point was disposed of by the court by holding that while the decree originally directing suit by the receiver was erroneous, the subsequent order granting Thacher's application to file a supplemental bill against stockholders practically abrogated the part of the decree complained of.

Here the receiver was one appointed under the provisions of General Statutes 1894, chapter 76, section 5902, referring *exclusively* to receivers of the corporation, and having no reference to the receiver appointed under the sections of the statute relating *exclusively* to the stock liability.

In Minneapolis Base Ball Co. *vs.* State Bank, 66 Minn., 441, the proceeding was inaugurated under chapter 76, and *a receiver of the corporation* appointed. Thereafter creditors filed in the same proceeding a bill to enforce the stock liability.

This was followed by a motion to make the stockholders parties defendant to the latter bill. On objection by the receiver the motion was denied, the lower court holding that the receiver of the corporation could bring the suit. From this order an appeal was taken and the question squarely presented whether the receiver of the corporation or the creditors should inaugurate the stockholders' suit. Upon this point the Supreme Court say:

"Has *a receiver of a corporation* appointed in sequestration proceedings under G. S. 1894, chap. 76, authority to enforce the personal liability of stockholders for the debts of the corporation? We answer this question in the negative."

Up to this point it will be observed that the questions presented to and decided by that court have been confined to deciding that the appointment of *a receiver for the corporation* does not impound or sequestrate the asset involved in the stock liability. As between that receiver and the creditors, the right of suit is in the latter, and the method of procedure is regulated by the provisions of chapter 76, *supra*, applicable to this proceeding.

We start with this as a fixed and settled principle of the local law. Conformably thereto the bill is filed by creditors against the corporation and all stockholders within the reach of the court's process to enforce the stock liability.

That suit proceeds to a decree in favor of all creditors in interest. An accounting of the debts and assets is had, the resulting deficiency ascertained, immediate decrees are rendered against the stockholders before the court, and a receiver appointed as representative of creditors.

The questions then presented are two: (1) Does the statute authorize such an appointment? and (2) What are the powers of the receiver thus appointed?

To decide these questions as this court has in the case at bar, by reference to the cases reviewed above, is to make

their decision dependent on something wholly foreign and having absolutely no bearing on their solution.

These questions are wholly beyond and aside from anything involved in the previous cases. The statute providing for the appointment of a receiver of the corporation and defining his powers is one thing, the statute governing the proceeding for enforcing the stock liability is another. The solution of the questions here arises exclusively under the latter.

In assuming that these questions were foreclosed by precedents in the local jurisdiction adverse to petitioner's claim this court was clearly in error.

As far as we have proceeded in this analysis, the question is *clearly open*.

It remains therefore to be ascertained how far the local precedents have gone in the solution of these questions.

In Harper *vs.* Carroll, 66 Minn., 487, which was a suit by creditors against stockholders as in the case at bar, a special receiver was appointed with powers similar to petitioner.

In speaking of the character of this appointment the Supreme Court said in that case:

"The statute provides for the appointment of a receiver and this implies that his expenses may be recovered," etc.

This is an express recognition of the claim made that the provisions of the General Statutes Minnesota, 1894, chap. 76, sec. 5906, "and shall appoint one or more receivers," is a statutory authorization for the appointment of the receiver in the stockholders' suit.

Next in order is Hanson *vs.* Davison, *supra*, which has already been explained.

Lastly is the practical construction adopted and acted upon in the actual application of these laws in practice, to be later referred to.

In the light of this review one of two resulting alterna-

tives must be conceded, either (1) these later decisions, supplemented by the practical construction adopted by the local courts, are sufficiently indicative of the proper interpretation and purpose of the local law to be accorded controlling weight, or (2) *the construction of the law is still an open question.*

If the former alternative be accepted, the decision of this court on the question of local law is erroneous, because of obvious misconception of the precedents.

If the latter alternative be adopted the present decision is wrong, because this court has failed to construe or interpret the local law, erroneously assuming that such construction was foreclosed by local precedent.

APPLICATION OF DOCTRINE OF COMITY.

This court disposed of the subject of comity in its opinion by the following cursory statement:

"The question of comity cannot avail in a case where the courts of the State in which the receiver was appointed hold that an action similar to the one brought in the foreign jurisdiction cannot be maintained by him in the courts of the State of his appointment."

This statement was obviously based on the error in the interpretation of the Minnesota cases hereinbefore shown. If the application of the now generally prevailing rule of comity be doubted on the grounds stated in the decision of this court, seemingly a clear distinction should be made between denial of power and *want of occasion for its exercise,* in the interpretation of the local law.

This distinction is clearly illustrated by the decision in Hanson *vs.* Davison, *supra.* In that case two points were decided having important bearing upon the question under consideration. After holding that the judgment of the court in the original action was conclusive on all omitted

stockholders, on the ground of representation in the person of the corporation, the court held (1) that an ancillary action against an omitted stockholder *within the jurisdiction* of the court was not necessary, and that the proper remedy was by proceedings had and taken to bring such stockholder into the original action, and (2) that there was nothing to prevent the maintenance of ancillary actions abroad as against foreign stockholders who could not be thus brought in.

We have already explained that the original action is inaugurated by the creditors and that the occasion for the appointment of the receiver in that action first arises at the time of the decree. The holding referred to is, therefore, susceptible of the conclusion that as against an omitted stockholder *within the Minnesota jurisdiction*, and who can be brought into the original proceeding there pending, such receiver should not inaugurate separate ancillary actions.

This is clearly not *a denial of power*, but a rule of practice based upon conceived *expediency in matter of procedure*. The original action is intended, as held frequently by the courts of that State, to be sufficiently comprehensive to bring in all parties within the reach of the court's process. The rule announced is one of expediency and economy, calculated to protect the estate and fund from excessive costs otherwise involved in the institution of ancillary actions.

No one has ever doubted that it is within the power and jurisdiction of a court of equity to direct its receiver to proceed, if it be so advised, by separate and ancillary proceedings for the collection of different parts of a fund or estate confided to its administration (Peck *vs.* Elliott (C. C. A.), 79 Fed. Rep., 10, and cases).

Yet to hold in the case at bar, as a result of Hanson *vs.* Davison, that the receiver has no right in the home forum, would be to deny to the Minnesota court the possession of the power where the case only warrants the conclusion that its exercise has been dispensed with on grounds of expediency.

Prior to 1900 the statutes of Ohio were substantially identical with those of Minnesota as respects this class of liabilities. After a decree in an original stockholders' suit instituted in that State, and the rendition of judgments therein against local stockholders, suit was brought in the courts thereof by the receiver appointed in that proceeding to reach property fraudulently conveyed by one of the stockholder defendants. In this case the right and measure of the receiver's authority as a statutory officer was sustained by the supreme court of that State in Zieverink *vs.* Kemper, 34 N. E. Rep., 250.

In Kirtley *vs.* Holmes, 107 Fed., 1, *supra*, a receiver appointed by the court of Ohio under this statute in a suit to enforce the liability of stockholders there pending brought suit against a non-resident stockholder in a foreign jurisdiction.

In this case the circuit court of appeals of the sixth circuit, in an unanimous opinion announced by Day, J., used the following pertinent language:

"The action being for the benefit of all the creditors, and having been instituted upon that theory in the Ohio court, which is to ascertain the amount to be assessed against stockholders, and the creditors entitled to the benefit thereof, we think it is in harmony with the usages of equity to appoint a receiver who shall, under the direction of the court, bring an action in order to bring into the fund sums arising from the liability of stockholders beyond the jurisdiction of the court. The cause of action exists in favor of all creditors. It may be impracticable to unite all in the bringing of the action. A court of equity, in the exercise of its power to appoint a receiver, may well appoint one for the purpose of reaching such outstanding liabilities. The right of such a receiver appointed in another jurisdiction to maintain an action, has been recognized upon principles of comity, where no injustice would be done to the citizens of the local jurisdiction, or his recognition conflict with public policy."

Subsequent to the announcement of the opinion of the circuit court of appeals of the first circuit in Hale *vs.* Hardon, the legislature of Ohio amended its statute so as to practically conform to the requirements of the holding in the Hardon case. Those matters which were held by the court in that case to have been fairly implied from the language of the Minnesota statute were incorporated in the Ohio amendment in express terms. The inauguration of the proceeding by creditors in the first instance is left as before; the accounting of the debts and assets and ascertainment of the amount necessary to be contributed by stockholders, the immediate judgments in the original proceeding against local stockholders, and an express authority to the receiver appointed by the court in that suit to sue non-residents are provided for.

This act, as amended, was considered in the circuit court of the Indiana district in Burr *vs.* Smith, 113 Fed., 858, by Baker, J., and the right of the special receiver, appointed by the Ohio courts in the original action, to sue in foreign jurisdictions was expressly sustained.

Under the proceeding thus provided the special receiver contemplated is not empowered *to sue resident stockholders.* There is no occasion for the exercise of such power, for there, as in Minnesota, the original proceeding brought by creditors may be opened up and extended so as to reach every stockholder within reach of the court's process.

This amended statute expresses no more than is fairly inferable from the Minnesota law in question.

The supreme court of Maine in Childs *vs.* Cleaves, 95 Me., 498, well said that if the receiver's right was denied there was no one who could enforce the liability, and that recognition and standing would be accorded on the ground of comity.

Judge Putnam, in the circuit court for the Massachusetts district, said that the Maine court in the case cited evidently misconceived the character of the receiver, and considered

it as a different office from that presented in the Hale cases; but the Maine court reaffirmed its previous holding, notwithstanding the doubts expressed by the learned circuit judge, in Hale *vs.* Cushman, 96 Maine (51 N. E. Rep., 874).

CONCLUSION.

1. If this were a question of general law, more hesitation might be felt in pressing these views; but this court is construing a local law of Minnesota, and we submit that it should hesitate at a construction which will operate to practically nullify its objects and purposes. To deny efficacy to the spirit and purpose of the law as respects the right of the receiver to sue is to deny the existence of one of the most, if not the most essential features embodied in its provisions and to subvert those very objects and purposes without which the scheme and plan therein proposed is impossible of fulfillment.

This court has apparently assumed that the objects of the law may be fully subserved by confirming the right of creditors themselves, as contradistinguished from the receiver, to maintain supplementary actions in foreign tribunals.

It is settled that no original jurisdiction exists in such foreign courts.

Bank *vs.* Sayward (C. C. A., First Circuit), 91 Fed. Rep., 443.

Bank *vs.* Northwestern Guaranty Loan Co. (C. C. A., Third Circuit), 87 Fed. Rep., 252.

Post *vs.* Railroad, 144 Mass., 341.

Cleveland *vs.* Railway, 34 N. Y. Sup., 427.

The supplementary proceeding accords with the spirit of the law and its construction by the local courts.

One of the paramount purposes of the law is to provide a uniform method of administration. To accomplish

this the action in the home forum of the corporation is treated as the original, and all others auxiliary or dependent. The creditors are brought into this original action and their rights submitted to the jurisdiction of the court therein. In this manner the local court obtains control of the proceeding in its entirety.

If after the decree in this cause the whole matter is thrown open, if no power exists, by statute or otherwise, to direct and control subsequent proceedings, the obvious purpose of the plan devised by the statute fails.

It is no answer to this to say that the creditors may sue in foreign jurisdictions. What creditors shall sue? Will each foreign court in which such proceeding is inaugurated undertake to administer and distribute the fund? Will it be administered for all the creditors who have established their claims in the original proceeding, or for those only who have voluntarily come into these numerous supplemental proceedings?

These considerations may not be decisive. They should be accorded due weight when this court comes to interpret the Minnesota statute, as it must if it shall conclude that the precedents of that State are not sufficiently indicative of their construction.

If the local law provides for the appointment of a receiver in this stockholders' litigation as the supreme court of that State has held, and if the purposes of the law cannot be carried out and effectuated without power to sue in such receiver, *that power will be implied.*

As said by Mr. High:

"But to warrant them in the exercise of a power, it need not be expressly conferred, and if it can be fairly implied either from the general scope and purpose of the statute, or as an incident to a power expressly given, there is sufficient warrant for its exercise."

High on Receivers (3d ed.), sec. 322.

As indicating an implied denial of the receiver's capacity to sue, this court said, in its opinion referring to the Minnesota precedents:

"There is no holding that the statute itself provides in terms for such an action or empowers a receiver to maintain it, etc." (page 8).

Had this statement been made prefatory to and as a justification for an independent construction of the statute, with a view to ascertaining whether it contemplated such an appointment and the investiture in the receiver of the power in question, no criticism could have been made; but it was not. On the contrary, as shown by the context, it was stated as confirmatory of what was assumed to have been settled by previous cases in that State, viz., *that the receiver had been held to have no right to sue.*

There has been thus by the decision of this court engrafted upon the Minnesota law a construction as clearly opposed to the purposes of that law as the decisions relied upon are foreign to the point upon which they are cited. Thus this court has found and promulgated for Minnesota a condition of local law which never existed in that State, has based its holding upon precedents that have neither relevancy nor bearing, and has thereby established a decisive point in this cause.

2. We have already stated, in the briefs presented to this court, the practical construction placed upon the statute in actual practice in the courts of Minnesota; and if corroboration of our statement in this respect were necessary, the records of various cases might be pointed to, notably Childs *vs.* Cleaves, 95 Maine, 498; Finney *vs.* Guy, pending on writ of error to the supreme court of Wisconsin, at the present time in this court, as well as the receivership in the case at bar, all of which were of identical character, arose in the stock-

holders' litigation, were predicated on the same statute and invested in the receivers similar rights of suit.

In addition to the foregoing the writer is able to state of his own knowledge the stockholder receiverships of Carroll in the failure of the Citizens' bank and of Ueland in the receiverships of the Scandia bank, in both whereof similar powers were granted the receivers and foreign proceedings thereunder inaugurated, which were settled or compromised before trial. Several of these cases have been before the supreme court of that State, and in no one thereof was it ever suggested that the statutory powers had been exceeded. On the contrary, in one thereof—Harper *vs.* Carroll—that court, as hereinbefore stated, upheld the receiver's appointment as made under the statute. This element of practical construction may not be decisive, but is entitled to consideration in the interpretation of the local law.

3. It is admitted on all hands that the local law binds the creditor interests and prescribes the conditions without compliance wherewith those interests have no standing to assert the liability.

This phase of the local law seems to have been entirely lost sight of in the decision in the case at bar.

The creditor interests submitted themselves to the jurisdiction of the Minnesota court. They prayed by their bill the appointment of a receiver as the common representative.

When that court pronounced its decree and vested those creditor interests to all practical intents and purposes in the receiver, what effect should be accorded its action? In the first place, it took the collection of the judgments actually rendered out of the hands of the creditors and gave that right over exclusively to the receiver. No creditor after this decree could have inaugurated any supplementary proceeding to enforce that judgment. The matter was exclu-

sively placed within the control of the receiver. The same authority and control was conferred as respects non-resident claims.

This decree was binding on every creditor to that proceeding, and therefore on the only creditors having any interest in the enforcement of the liability.

The creditors are as much bound by these provisions as any others contained in the decree. They have neither right nor authority to interfere with the receiver's administration. That decree is seemingly as binding upon the creditor in a foreign as in a domestic tribunal. If a suit were today instituted by creditors, they would be met with the objection that the right had been vested by the decree, to which the creditors were parties, in the receiver in such manner as to estop the creditors from suing (Castleman *vs.* Templeman (Md.), 41 L. R. A., 367, 369).

4. The case of Evans *vs.* Nellis, cited in the opinion of this court, presents considerations entirely inapplicable to the case at bar. That case arose under the laws of Kansas. At the time the stock was subscribed for the law of Kansas prescribed a several and independent remedy in favor of creditors (considered by this court in Whitman *vs.* Bank, 176 U. S., 559). Prior to the institution of the Evans suit this law was modified, and the right to enforce the liability devolved upon the receiver of the corporation.

As interpreted by the Kansas court, the right of the receiver was conditioned upon action by the local court in the nature of an assessment. The receiver in the Evans case sued a stockholder in the circuit court for the northern district of New York to recover the liability *without performance or showing of the requisite condition precedent.*

Upon this state of facts there was certified to this court the question whether the receiver had any right or power to sue. This court answered that question in the negative.

No such question arises or is presented in the case at bar. There is here no question but that the requisite conditions precedent have been performed. The question here is whether, after such conditions exist, the receiver, by force of the statute and decree of appointment, is entitled to foreign recognition and standing as the common representative of creditors.

For the reasons hereinbefore stated, it is submitted that the court in this case is in error in the interpretation of the local law of Minnesota, and as the error referred to has been made the basis of deciding the case at bar, a rehearing should be granted according to the prayer of the annexed application.

Respectfully submitted.

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James K. Redington,
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No. 621. Of October Term, 1900.

FILED
APR 29 1901
JAMES H. MCKENNEY.

Brf. of Johnson for Respondents

IN THE

Supreme Court of the United States.

Filed April 29, 1901.

IN EQUITY.

Ex Parte **WILLIAM E. HALE, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company (a Corporation), Petitioner,**

IN THE MATTER OF THE PETITION FOR WRIT OF *CERTIORARI* REQUIRING THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT TO CERTIFY TO THE SUPREME COURT FOR ITS REVIEW THE CASE OF W. E. HALE, RECEIVER, APPELLANT, *vs.* EDWARD P. ALLINSON *ET ALS.*, APPELLEES.

RESPONDENTS' BRIEF.

JOHN G. JOHNSON,
For Respondents.

Allen, Lane & Scott Prs., Phila.

IN THE SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

William E. Hale, Receiver, Appellant,

vs.

Edward P. Allinson et als., *Appellees.*

October Term, 1900.

No. 621.

IN THE MATTER OF THE PETITION FOR WRIT OF *Certiorari* TO CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT TO REVIEW CASE OF W. E. HALE, RECEIVER, APPELLANT, *vs.* EDWARD P. ALLINSON *et al.*, APPELLEES.

RESPONDENTS' BRIEF.

The petitioner filed a bill in equity in the Circuit Court, as Receiver appointed in proceedings instituted in the Minnesota courts, at the instance of creditors of The Northwestern Guaranty Loan Company, against said company, and against certain of the stockholders thereof, resident in Minnesota, wherein, as he averred, there had been an ascertainment of the amount of the corporation's liabilities and the value of its assets. He claimed that under the Constitution and laws of Minnesota, each stockholder in case of such deficiency of assets of the corporation, was obliged to contribute towards the meeting such deficiency an amount not in excess of the par value of his

shares; that the amount of the deficiency had been ascertained in the aforesaid proceedings to be so great as to require that every stockholder should contribute the maximum amount for which he could be held liable; that it had been therein decreed that each stockholder should pay an amount equal to the par value of his shares; that he had been therein appointed Receiver to collect from the stockholders said amounts; that the forty-seven defendants named in his bill were, respectively, holders of shares in said corporation each in an amount therein stated; and that it was the duty of each to pay to him, as such Receiver, the amount equal to the par value of his shares.

Demurrers were filed by the present respondents, which rested substantially upon three grounds: (1) that the case was not within the equity jurisdiction of the court; (2) that no stockholder who had not been a party defendant in the proceedings in Minnesota was bound by anything therein done in the way of determining the amount necessary to be contributed by the stockholders; and (3) that a Receiver appointed in a foreign litigation had no power to prosecute suits in other jurisdictions.

The court below, without deciding the second and third grounds of demurrer, sustained the first, and held that inasmuch as the suit was one instituted in equity by a Receiver to compel forty-seven different persons to pay amounts due by each under his separate contract with the corporation, there was an adequate remedy at law, and no jurisdiction in equity.

The Circuit Court of Appeals affirmed the judgment of the Circuit Court upon the ground that there was an adequate remedy at law, and a lack of jurisdiction in equity.

None of the questions suggested by the petitioner in his petition and brief are necessary to be determined.

If this court shall be of the opinion that the question as to the equitable jurisdiction is one of such difficulty as requires it to issue a writ of *certiorari*, it will, of course, grant such writ; but we respectfully submit that if it be of the contrary opinion, it will not deem it necessary to determine, in a cause in which, because of lack of juris-

diction in the court below, there could be no valid determination, questions which may arise in some other action if the same be properly instituted.

The theory of the petitioner in the court below was that by certain proceedings in Minnesota it had been conclusively determined that each of the respondents was obliged to pay a specific amount of money. Accepting, for the purposes of the suit brought, the theory thereof, the respondents claimed that there was a several and distinct demand of a specific amount of money, from each of several respondents, each of whom could defend only because of his own individual defense.

The respondents therefore contended that forty-seven different litigants, each alleged to be bound to pay because of his or her separate contract a specific sum of money, could not be bound together as joint defendants in equity where each must defend upon individual grounds.

The petitioner in the court below seemed to think that because each defendant claimed there was no jurisdiction in equity, he was entitled to tie all together as joint defendants, because each rested his defense upon the same point of law. Further, he seemed to think that because there were forty-seven of these defendants, a court of equity ought to be allowed to intervene.

In support of their contention that the action of the Circuit Court in refusing to take equitable jurisdiction was proper, the respondents printed an argument substantially in the words which we repeat, and by its reproduction, will say all we desire, in opposition to the motion for a writ of *certiorari*.

Before discussing the question of jurisdiction, it may be well to ascertain, by an examination of the bill, and the argument of the petitioner in support thereof, the exact position maintained by him. Such examination will show, under his theory as to what was concluded by the Minnesota litigation, that his suit in equity, against forty-seven parties, to collect against each an amount due upon his contractual obligation, as a holder of shares, was of such nature as left to each defendant but one of two defenses,

viz., that he was not a shareholder, or that he had paid the amount claimed from him. In other words, that, though under the theory of the bill, nothing remained to be done by each of said forty-seven persons but to pay the amount claimed under his separate contract, or to show payment, or the non-existence of the stockholding relation, yet all these persons could be joined in one suit in equity in which they would be obliged to make good their respective separate defenses.

Let us, therefore, in the first instance, see (1) what the bill claimed; (2) what the petitioner avers with regard to the defenses open to the defendants; and (3) what points were raised by the demurrer.

***First.*—As to what was claimed by the bill.**

It averred that the forty-seven defendants were respectively holders, to the extent in each case designated, of the shares of stock of The Northwestern Guaranty Loan Company, a corporation of Minnesota; that twelve thousand five hundred shares at the par value of $100 per share had been issued; that on the twentieth day of May, 1893, the corporation had been duly adjudged insolvent and a Receiver of its corporate assets had been appointed; that since that date it had not had, or conducted, any business; that in the course of its business it had contracted indebtedness to an extent of upwards of $3,000,000; that under and by virtue of the Constitution and general laws of Minnesota each stockholder assumed personal and contractual liability for the indebtedness of the corporation to the amount of the par value of his full holdings of stock for the equal and common benefit of the corporate creditors, to be enforced in proceedings, as indicated by the general statutes of the State; that on or about the first day of November, 1893, an unsatisfied judgment creditor of said company, after a return of an execution thereon unsatisfied, had filed in a District Court of Minnesota County a bill in equity on behalf of himself and all other creditors of said Loan Company against it

and against all and several the stockholders thereof, for "the purpose of enforcing the aforesaid liability of such "stockholders, and to that end, amongst others, for an "accounting of the debts and assets of said corporation, "the ascertainment of the deficiency, the apportionment "and assessment of such deficiency amongst the several "stockholders, and for the appointment of a Receiver for "the purpose of enforcing and collecting such assessment "or ascertained liability all and several;" that process had been duly served on said corporation and such of the stockholders thereof as resided within the State of Minnesota; that no service had been made upon the defendants; that said District Court, on the eighth day of February, 1897, had adjudged that an indebtedness of upwards of $3,000,000 was owing by said Loan Company to its several creditors; that the value of the total assets and properties of the company was $450,000 and no more; that the total outstanding stock of the company was twelve thousand five hundred shares at the par value of $100 each; that the names of the several stockholders, including defendants, and the amount of stock held by each were as specified; that each stockholder was liable to contribute, for the common benefit of the creditors, an amount equal to the par value of the stock held by him; that each of the stockholders within the State of Minnesota had been adjudged to pay and contribute a sum equal to the par value of the stock held by him; that W. E. Hale had been appointed Receiver for collecting and enforcing, for and in behalf of all the creditors, the judgments against such Minnesota stockholders and for the purpose of collection, by such proceedings as might be proper, the ascertained liability of non-resident stockholders of said Northwestern Guaranty Loan Company, over whom the court, by reason of non-residence, had not acquired jurisdiction for the purpose of rendering personal judgment; that said funds thus collected were to be held by the Receiver for the purpose of equal *pro rata* distribution amongst the creditors, subject to the further order of the court; and that the court had held it would

retain jurisdiction of the cause for the purpose of making other and further orders or decrees in the matter of distribution and otherwise, as might be necessary to protect the rights of the several parties in the premises.

The bill averred thus:—

> The decree hereinbefore recited ascertaining the necessity for and amount to which stockholders should contribute, is conclusive in that regard on all stockholders of said corporation; that said decree cannot be executed without and beyond the limits of the jurisdiction of the State of Minnesota without the aid and interposition of equity in enforcing said decree in or by ancillary proceedings; that the several defendant stockholders herein are liable to contribute to a fund on behalf of the creditors of said corporation in amounts equal to the par value of their respective holdings of stock.

It prayed as relief:—

> That said defendants and each of them, may, if they can, show cause why they and each thereof should not be adjudged liable, to pay and contribute to the extent of the par value of their several holdings of stock for the equal benefit of the creditors of said corporation.

It will be observed that the bill did not claim it was filed to avoid a multiplicity of suits; nor that there were any grounds of defense common to all the defendants. On the contrary, it averred that the proceedings in Minnesota concluded the defendants, and that to the extent they were holders of shares it was their duty to pay an amount equal to the par value thereof. It prayed against each, a decree of payment of an amount equivalent to the par value of the shares by him, or her, held. It amounted to nothing more than an attempt to collect, in one suit against all the stockholders, the amount which it was claimed, each was separately obliged to pay. Upon its theory, every possibility of a defense was lacking other than one special in the case of each stockholder.

Much is said, by way of argument, in the petitioner's brief, to the effect that Judge McPherson conjured into existence imaginary defenses for the purpose of defeating the equity of the bill. The answer to all thus said is, that

the bill itself was founded upon the assertion that there were no defenses other than those which must be separate in the case of each stockholder, because resting solely upon the question of the fact of his holding and of the non-payment of what was claimed against him.

***Second.*—As to the theory of law with regard to the scope of the defense and the rights of the complainant, upon which the bill was rest[illegible].**

The petitioner rests his bill upon the decision in Hale *vs.* Hardon, 95 Fed. Rep., 747, 754, and upon the decision by the Supreme Court of Minnesota in Hanson *vs.* Davison, 76 N. W. Rep., 254.

The petitioner claims that what was said by this court in Hancock National Bank *vs.* Farnum, 176 U. S., 640, concerning the effect of a finding, as against the corporation itself, of a fact which when thus found was binding upon all interested in the corporation, is applicable to a case in which a fact was found as against creditors not concerning assets of the corporation, but concerning a matter relevant only *quâ* the liability of stockholders to creditors. He therefore quotes, as the law of this case, what was there said in these words:—

> We do not mean that it is conclusive as against any individual sued as a stockholder, that he is one, or if one, that he has not already discharged by payment to some other creditor of the corporation the full measure of his liability, or that he has not claims against the corporation, or judgments against it, which he may, in law or equity, as any debtor, whether by judgment or otherwise, set off against a claim or judgment, but in other respects it is an adjudication binding him. He is so far a part of the corporation that he is represented by it in the action against it. Ball *vs.* Reese, 58 Kan., 614. In that case it was said, correcting an inference which was sought to be drawn from language in the case of Howell *vs.* Manglesdorf, 33 Kan., 194, in respect to the effect of a judgment against a corporation (pages 617, 618):—
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> "The general holding in this court has been that a judg-"ment is final and conclusive between the parties and their "privies; and we think it must be held that every stockholder

"in a corporation is so far privy in interest in an action "against the corporation that he is bound by the judgment "against it. In the absence of fraud and collusion, the judg- "ment must be held to be final and conclusive against the "stockholder if the court rendering it has final jurisdiction. "As the judgment was valid, the court committed error in "allowing the defendants to go behind it and contest matters "which were conclusively settled by the judgment against the "corporation." * * *

Now, as the judgment rendered in the Kansas court is in that State not only conclusive against the corporation, but also binding upon the stockholder, it must, in order to have the same force and effect in other States of the Union, be adjudged in their courts to be binding upon him, and the only defenses which he can make against it are those which he could make in the courts of Kansas. The question to be determined in this case was not what credit and effect are given in an action against a stockholder in the courts of Rhode Island to a judgment in those courts against the corporation of which he is a stockholder, but what credit and effect are given in the courts of Kansas in a like action to a similar judgment there rendered. Thus and thus only can the full faith and credit prescribed by the Constitution of the United States and the Act of Congress be secured.

The bill therefore averred that the proceedings in Minnesota were conclusive; and that there was no matter of fact, or of law, in which the divers stockholders were interested as a whole. The case is argued in this court upon the same theory.

It is not within the power of the Receiver to claim that a court of equity has jurisdiction of a matter, by way of avoidance of a multiplicity of suits, which, as he presents it, involves no such question of multiplicity, and no question of common defenses.

Had he presented his bill upon any other theory, claiming that there must be an ascertainment, in this court, of the amount to be paid, and that all questions had not been settled in the Minnesota court, his bill would have failed by reason of what was decided by the Circuit Court of Appeals for the Third Circuit in the Elkhart case, 87 Fed. Rep., 252.

It is true that by way of demurrer the defendants set

up a lack of equitable jurisdiction, as well as a claim that they were affected by no proceedings in which they had not been served, in the course of which facts had been found against them, and that a Receiver appointed in a particular litigation has no extra-territorial jurisdiction. The court, however, must determine whether a bill is well grounded in equity, not because of the defenses thereto, but because of the grounds for equitable relief therein stated.

If the Receiver was right in his contention as to the conclusiveness of the proceedings and as to his extra-territorial power, he was entitled to recover against each defendant in an action instituted in a court of common law. If, however, he was not right in his contention in those respects, he was not entitled to proceed either in equity or at common law.

***Third.*—As to the ground of demurrer which was sustained in the court below, viz.: The bill did not present a case within the jurisdiction of a court of equity.**

The petitioner has put his equity upon four grounds, which may thus be summarized: (1) That the right sought to be enforced is an equitable one; (2) that the bill seeks to enforce a decree of an equity court, and is therefore maintainable in another court of equity; (3) that equity has jurisdiction of a cause even though the relief asked for is merely the payment of money; and (4) that the petitioner is entitled to equitable relief because of the necessity of avoiding a multiplicity of suits.

We will discuss the question of equitable jurisdiction under four propositions:—

1. *The right sought to be enforced by the petitioner is not an equitable one.*

2. *No decree heretofore made in any court against the appellees is sought to be enforced against them in the present bill.*

3. *The bill asks nothing more than a money decree, without presenting any equitable ground of relief.*

4. *Where there are several and distinct causes of action against different defendants under circumstances such as characterize this case, the exercise of equitable jurisdiction is not justified upon any such grounds as the avoidance of multiplicity of suits, or for any other reason.*

1. THE RIGHT SOUGHT TO BE ENFORCED BY THE PETITIONER IS NOT AN EQUITABLE ONE.

In support of his contention that the right which he seeks to enforce is an equitable one, the petitioner said in his brief in the court below (page 8):—

> The right, so far as creditors are concerned, is in common and equal; that the purpose of the liability is to create a fund, and the obligation of the stockholder to contribute to that fund; that the liability is not an asset of the corporation, or enforceable by it or its successors in interest, as Receiver, assignee or otherwise; and, finally, that it is to be made available in the equitable proceedings indicated, brought by or on behalf of the creditors themselves directly, and in such further proceedings as may be necessary to extend the relief so as to embrace all stockholders subject to the liabilty.

We are not dealing with a bill in equity filed in the lower court by a judgment creditor against the corporation and all the stockholders, seeking to ascertain the extent of the deficiency of the corporation assets and the amount of contribution necessary to be made by the stockholders under their statutory liability. The present bill is not of the nature we have just outlined. It is based upon no such foundation. If it was, it would be demurrable, as was the bill in the Elkhart case, for lack of proper parties. It is a bill which avers that in proceedings alleged to be conclusive, the extent of the contribution of each stockholder was ascertained and a Receiver was appointed to collect from each stockholder the amount therein ascertained to be necessary to be paid by him.

The bill is based upon the duty imposed upon each stockholder, by the statute or Constitution of Minnesota,

as a contractual obligation, to pay an amount equal to the par value of his shares. It avers that the maximum of liability, viz., the payment of such equivalent amount, has been conclusively determined. In what possible aspect can this contractual obligation, or statutory duty, be claimed to be an equitable right? Each stockholder enters into an obligation, imposed by the statute because of his holding of shares, to pay, in case of a deficiency of corporation assets, to an extent not exceeding the par value of his shares. After the extent of the payment has been settled by a court of equity, the transaction is precisely as though the statute had originally obliged each stockholder, in case of corporation insolvency, to pay a fixed amount, equal to the par value of his shares. If the amount had not been previously conclusively ascertained, the bill must fail. If, as the petitioner claims, it has been thus ascertained, nothing remains for the defendant but to pay a designated amount or to show that he is not a stockholder or has discharged his obligation.

It is true a Receiver is seeking to collect under a duty on his part, after he has collected, to account to another court of equity having control, it is claimed, of the distribution, for the amount of his collections. This, however, does not in any way affect the question of whether the cause of action is equitable or legal. It is the duty of a Receiver to account for, and to distribute, in accordance with the rights of those interested in his collections, whether the latter be made in law or in equity. A trustee may have a right of action against a third person, but the fact that a suit is brought by such trustee does not give jurisdiction to a court of equity if the action is only cognizable by a court of law.

The method of distribution of the fund, after its collection, through the action of a court having no control over the distribution, does not affect the question of the proper form of the action in the forum of collection.

Concede that the liability of the stockholders to pay is not an asset of the corporation or enforceable by it, we must still deal with the fact that the method of its collec-

tion must be determined by the nature of the liability, and that courts of common law are amply sufficient to give all necessary relief to those resting their claims upon contractual or statutory liabilities.

We must not lose sight of the fact that the present bill begins and ends with a demand for the payment of money averred to be due by each person who is a stockholder of the insolvent corporation.

After such collection, the Receiver must distribute in another forum, which has no control of the method of collection, and can at best do nothing more than command that the alleged obligation shall be collected by its Receiver.

The statutes of Minnesota give to a judgment creditor, after the insolvency of a corporation, the right to enforce the statutory liability after ascertainment of the total amount of the deficiency of corporate assets. The original proceeding must necessarily be in equity, and if, by the court taking the original jurisdiction, all the stockholders can be served, it will have power to make and to enforce its decrees against them. As against stockholders not served, however, if the petitioner is right in his contention, the court taking original jurisdiction may authorize a Receiver to collect what it shall have found to be due from them, as well as from the stockholders actually served. This court, under the bill as filed, can deal with nothing except the claim of the Receiver to collect an ascertained and fixed sum of money resulting from a *quasi*-contractual obligation. It cannot, and, as petitioner claims, it need not, enforce equitable remedies prior to an ascertainment of the sum to be paid. Its jurisdiction, therefore, necessarily, must depend upon the nature of the claim to it presented.

2. NO DECREE HERETOFORE MADE IN ANY COURT AGAINST THE APPELLEES, IS SOUGHT TO BE ENFORCED AGAINST THEM IN THE PRESENT BILL.

We do not care to question the proposition that a court of equity may entertain jurisdiction of a bill against a de-

fendant which seeks to enforce against him a decree in equity made in another court. A court of equity did enforce such anterior decree in the case of Shields *vs.* Thomas, 18 Howard, 253. In that case Shields had appeared as defendant in a Kentucky equity court, where a final decree was entered against him, which was sought to be enforced in the Iowa Federal court of equity. This court dwelt upon the necessity, under the circumstances of the case, for the exercise of equitable jurisdiction in Iowa.

In the present case, however, it is not claimed by the petitioner that any decree was ever entered against the defendants. On the contrary, he admits they were not served in Minnesota; he avers that all the prerequisite proceedings necessary to ascertain the amount each holder of shares must pay, have been concluded; and claims that a person not even decreed to be a stockholder shall pay, if found to be a stockholder, the maximum sum required by the statute. So far as regards any proceeding against the appellees fixing them specifically with liability, the case in this court is "*de novo*."

If the theory of the petitioner be correct, each stockholder, *quâ* the payment of an amount equivalent to the par value of his shares, is in the position in which a stockholder owing unpaid subscriptions on his stock would be, after the levy of an assessment covering what is unpaid.

3. THE BILL ASKS NOTHING MORE THAN A MONEY DECREE. IT DOES NOT REST ITS DEMAND UPON ANY EQUITABLE GROUND OF RELIEF.

We concede that a court of equity may, under certain circumstances, entertain jurisdiction of a bill demanding the payment of money. Such jurisdiction will not be entertained, however, simply because money is demanded. On the contrary, if money and nothing more be demanded, and if the bill does not disclose equitable grounds of relief, it will be demurrable.

As we have seen, however, the present bill is framed

upon the theory of a duty upon each stockholder to pay the equivalent of the par value of his stock, after ascertainment in Minnesota that the assets of the corporation to the full extent of the equivalent of the par value of all its shares are insufficient for the payment of its debts.

This court is not asked to find, and, under the framework of the bill cannot find, a fact cognizable only, or better there than elsewhere, in a court of chancery.

We concede that where it is necessary to apply to a Chancellor for equitable relief, he may proceed with the whole case thus presented to him and may administer final relief, even to the extent of ordering money to be paid. His right to order the money paid, depends, however, upon some need for equitable relief stated in the bill. No such relief is shown by the bill to be necessary and nothing is asked for excepting a decree for money.

4. WHERE THERE ARE SEVERAL AND DISTINCT CAUSES OF ACTION AGAINST DIFFERENT DEFENDANTS UNDER CIRCUMSTANCES SUCH AS CHARACTERIZE THIS CASE, THE EXERCISE OF EQUITABLE JURISDICTION IS NOT JUSTIFIABLE UPON ANY SUCH GROUND AS THE AVOIDANCE OF MULTIPLICITY OF SUITS OR FOR ANY OTHER REASON.

The petitioner rests his right to equitable relief, largely upon the ground that it is necessary to avoid multiplicity of suits. In support of his contention he has shown much learning, considerable ability and very great ingenuity.

It is not necessary for us to enter into a controversy with him concerning certain general propositions, amounting almost to platitudes, which he has stated. We contend that the burden is upon him to show that he has presented by his bill a foundation for equitable jurisdiction. We concede that the right of trial by jury guaranteed by the Constitution of the United States does not exclude the jurisdiction of a court of equity to such extent as such courts had exercised a jurisdiction which excluded such trial. We do contend, however, that every citizen is entitled to a trial by a jury saving in a cause within well-de-

fined limits of equity jurisdiction, and that, unless the circumstances are of such character as require equity to interpose, he cannot be compelled to fight his litigation in a general battle involving not merely himself, but other litigants with whose success, or failure, he has no concern.

The obligation of each stockholder is several and distinct, and rests upon his own special contract with the corporation, implied by reason of statutory provisions imposing liability upon him under certain circumstances. Primarily there is no reason why A., who is indebted to the creditors of a corporation by reason of his contract with them implied by a statute ordering him to pay a sum not to exceed a specified maximum, in case of deficiency of corporation assets, shall be joined in a suit against B. and C. seeking to enforce against them their separate and distinct contracts. The stockholders are indebted, if at all, not jointly, but severally. We have heretofore admitted that it may be necessary to join them all with the corporation in a suit having for its purpose the marshaling of assets, the taking of an account and the determination of the extent of a deficiency. All these things, however, as the petitioner claims, have been done. Nothing in this respect remains incomplete. Why, therefore, if the Receiver is entitled to treat the obligation of each defendant as now reading as though he had agreed to pay specifically an amount equal to the par value of his shares, is he not obliged to sue each upon his contract separately?

This court, in Kennedy *vs.* Gibson, 8 Wallace, 505, as Judge McPherson has shown, declared:—

> Where the whole amount is sought to be recovered, the proceeding must be at law. Where less is required, the proceeding may be in equity, and in such a case an interlocutory decree may be taken for contribution, &c.

This declaration, as Judge McPherson has shown, has been followed in almost the latest case upon the subject, decided by the Circuit Court of Appeals of the Sixth Circuit, in Bailey *vs.* Tillinghast, 99 Fed. Rep. 801.

We would be very sorry to deny that courts of equity

have taken cognizance of actions for the purpose of avoiding a multiplicity of suits. This, however, must not be confounded with the attempt made by the petitioner to induce a court of equity to take cognizance in one suit of many separate causes of action at common law against many separate defendants, because of the number of the latter. A Receiver of an insolvent bank may find himself in the possession of a large number of promissory notes, given to the bank by many different persons. It would probably be more convenient for him to join them all in one suit in equity, than to bring separate common-law actions against each. No one, however, would suppose, because of the inconvenience resulting from many suits, that he could join them. It might be, that every note might raise a question as to its being properly stamped, and that each defendant would defend upon the same ground of improper stamping because of a misunderstanding which had universally prevailed, as to the stamping required, when the notes were executed. It would hardly be contended that because the defense rested upon the same point of law, all the makers of the notes could be joined as defendants in one suit in equity.

As we have said, it is the right of each defendant, to have a common-law trial of litigations not within the cognizance of equity courts, and to insist that the proceedings against him shall be so conducted that he will not be exposed to the expense and inconvenience of a joinder of other persons as defendants for whose success he does not care.

If, therefore, the Receiver's case is as he asserts, so peculiar in its character that he should be permitted to avail himself of equitable remedies because of the insufficiency of those afforded by the common law, it is his duty to satisfy the court of the existence of such peculiarity. The burden is upon him, of establishing the existence of that which ought to deprive the defendant of his *prima facie* right to a jury trial and to an action confined to himself.

Upon the petitioner's theory, the only defense which can be interposed by any defendant, is the non-holding of the

shares, or the fact of payment of what is alleged to be due by him. This defense, in the case of each defendant, is separate and distinct. There is no community of interest or of defense or in the proof upon which the latter must rest. The effect of the joinder of all the defendants is, to compel each defendant to participate in proceedings more voluminous and extensive than they would be if confined to his own cause. Even if the theory of the petitioner be incorrect and if other defenses are open, each defendant will be prejudiced in that part of his case which concerns his separate and distinct defense, by the joinder with others who have no interest therein. It must, therefore, be conceded that a strong case of inability to proceed adequately in a common-law action, must be established by the complainant. In what respect is a court of common law unable, if the Receiver is right as to his ability to collect and as to the conclusiveness of the Minnesota proceedings, to afford adequate relief? The present Receiver, in Hale *vs.* Hardon, found himself able to recover at common law the amount of his claim. He asserts, however, that by joining all the forty-seven defendants in one suit he will avoid multiplicity of actions. If, however, his right is several and distinct as against several defendants, it is his duty to bring as many actions as there are defendants. The fact of his having many claims, does not justify his enforcement of them saving in accordance with settled principles. He pretends that each defendant, as to a part of his defense, can set up the same matter, and that because thereof, all should be obliged to maintain one defense, although the cause of action is several, resting upon separate contracts, and although, as he concedes, each may deny the existence of any liability by himself because of the non-existence, in his particular case, of the relation from which it is claimed to result.

As we have heretofore said, the right of a Receiver, to claim equitable jurisdiction, depends, not upon the defenses which may be interposed, so much as upon the nature of the case which he sets forth. He claims, as we have said, that there is an absolute, incontestable, duty,

on the part of each defendant, if a shareholder, to pay. He does not ask for equitable relief upon the ground that the various defendants are interposing a defense which is common to all and ought to be settled in one controversy. For this reason it is impossible for him to succeed in his demand that a court of equity, in the present controversy, because of its right under certain circumstances to take jurisdiction of a cause to avoid multiplicity of suits, should take cognizance of the present suit, which does not make any averments of facts out of which the jurisdiction could be evolved. *Non constat* that the defendants will raise any other ground of demurrer than the lack of equity in the bill. The latter, as we have said, must stand upon its own averments.

Apart from this, however, we submit with the utmost confidence that there exists in the present case none of those circumstances which have induced the courts in the instances cited by him to assume equitable jurisdiction.

It is only necessary to read the cases which he cites, and to become apprised of the circumstances under which courts of equity acted, to satisfy ourselves that the present action presents no such situation as demands the relief in those cases accorded.

A person who avers that some one is about to do some act claimed to be illegal, which if done will create a large number of supposed rights which will require thereafter to be litigated separately, may ask a court of equity to interpose by injunction to prevent the doing of such act, for the purpose of saving such subsequent multiplicity of suits. There is no analogy between such a ground for equitable interposition and that presented in the present cause.

Again, whilst persons may hold separate claims against a particular property, courts of equity have interposed and have permitted a joinder of all the claimants upon averments that the separate claims rested upon one title as against the party demanding relief.

Other cases can be found in which, as prerequisite to judgment, it was necessary to take complicated accounts,

or to ascertain facts, or even legal rights in which many persons were interested where the proceedings could be conducted without prejudice to the rights of any one, and almost demanded the joinder of all concerned.

None of these cases, however, is similar to the present, where a separate contract is sought to be enforced against the defendants who ought to be kept separate, in a suit in equity in which all are joined. The petitioner says all the defendants may assert, although his bill does not aver they will, that the proceedings in Minnesota, to which they were not parties, did not affect them, and that a Receiver, appointed in Minnesota, has no right to demand recognition in the court of another State for the purpose of therein enforcing claims.

These defenses, however, are not peculiar to the cause before this court. They are the assertions of general principles of law. To assume equitable jurisdiction in one action, of distinct claims, because the different defendants will avail themselves of general principles of law, would be anomalous.

The title to five or six distinct pieces of real estate, held by five or six different persons, derived from different predecessors, may all rest upon the assertion of the rule in Shelly's Case. Would this justify proceedings in equity to recover possession by a person claiming all of them? All the defendants agree, by demurring, in a defense, that the bill presents no ground for equitable relief. Does this justify their joinder, though the causes of action against them be separate, in one proceeding in equity? We concede that cases may be found in which the courts have held, where a great number of defendants as against the claimant of a whole tract, maintain the existence of a title common to all, that such defendants may be joined in a proceeding in which all will be compelled to assert, or to defend, the common title. No court, however, has held, because of the fact that several defendants, against whom there are several causes of action, appeal to the same settled legal principles, that they can be joined in one suit.

We repeat, therefore, that *prima facie* there is no right

to equitable relief in the petitioner; that it is his duty to show clearly, that unless accorded equitable relief he will not be able to succeed; and that he has utterly failed to establish the inability of courts of common law to grant him all the relief, if any, to which he is entitled. We repeat, that unless the petitioner successfully maintains the burden which is imposed upon him, each defendant has a right to demand a separate suit against himself in a forum having jurisdiction, and none the less, because many other defendants may rest their defenses upon the same general principles of law to which he will appeal.

We may concede that as common-law remedies develop their inadequacy, equitable relief may be accorded; but we deny that the petitioner has shown, in this case, any inadequacy, such as justifies the extraordinary procedure he has pursued.

It is not necessary to consider, in detail, the large number of authorities which the learning of the counsel of the petitioner has enabled them to assemble in their brief. We meet them with the general remark that, excepting possibly in the case of Hale *vs.* Hardon alone, we do not challenge their correctness; but we claim that they furnish no foundation for the demand of equitable relief in the present controversy.

The cases in which one plaintiff has been permitted to proceed in equity against many defendants, or in which many plaintiffs have been permitted to proceed against one defendant, because of a common ground of claim or of defense, are radically different from the present. In many of them the right to relief depended upon the ascertainment of facts in which all the persons joined had a common interest, although the results to each might be distinct. In most of them the issue of fact common to all could better have been determined in a case in which all were joined, than in separate suits. In very many of them there was a necessity to join all the parties in order to obtain any relief. The cases (and they have almost all involved other equitable reasons for interference) in which a question of law has been held sufficient to justify proceeding in equity

because of all being interested alike in its establishment or denial, are those in which such question was only necessary to be determined in the particular case, and was not one of those general principles which constitute part of the general body of law. No such general principle as that no one can be concluded by legal proceedings in which he is not a participant, or that one court is not obliged to recognize the right therein of a Receiver appointed by another, were ever held sufficient to give the jurisdiction claimed in this controversy.

Outside of the demurrer, which rests upon the want of jurisdiction in equity, the remaining demurrers rest upon the denial of the right of the Receiver to sue in any forum. They rest upon no question of fact. Surely, if the Receiver sued at common law, it would be his duty to prove there had been proceedings which concluded the stockholders, settling their duty to pay the amount demanded, and which entitled him to enforce such duty. The defendants need do nothing until the establishment by the Receiver of the vesting in him of the right of the creditor to proceed, without the ability in the defendants to question the amount of his claim. Can a Receiver, because it is necessary for him to establish his right to proceed at all, force a defendant, entitled to the decision of a common-law tribunal, into a court of equity? The cases in which courts of equity have taken jurisdiction have always been those in which the questions of fact, or of law involved, were those which went to the existence of any cause of action, not merely to the capacity in which the plaintiff claimed.

The petitioner (page 11) said in his brief in the court below:—

> The asserted obligation of defendants is referable to a common origin, *i. e.*, the Minnesota law, constituting the contract between stockholders and creditors. The right to assert the obligation is equally referable to a common origin, *i. e.*, the decree in the parent proceeding ascertaining the conditions precedent to its enforcement as against all stockholders. And finally, the right of complainant to proceed in behalf of

and as representative of all creditors in interest, presents a common question equally affecting all the defendants and in which they are similarly interested. The rights of all parties in interest have therefore a common origin and present similar questions of law and fact decisive of the issues involved.

The Minnesota law, "constituting the contract between "stockholders and creditors," imposes an obligation upon the stockholders of all corporations. Can Receivers of several corporations collect in one suit in equity against the different stockholders of different corporations, because of the common origin of the obligation, *i. e.*, "the "Minnesota law"?

What possible foundation for the exercise of the jurisdiction of a court of equity exists, by reason of the fact that a decree in Minnesota ascertained, if it did ascertain, as petitioner claims, conclusively, that it was necessary for each holder of shares to pay an amount equal to the par value of his holding? The condition precedent to a suit at common law, is the ascertainment of the amount per share to be paid by each stockholder. Thus ascertained, the obligation results from the Minnesota statute, not from the Minnesota legal proceedings.

The complainant does, or does not, have a right to proceed because of his appointment as Receiver to collect from each stockholder. If he does not possess such right, he cannot proceed. If he does, the nature of his proceeding must depend upon the nature of his action against each stockholder. Upon his theory, there is no common question, "equally affecting all the defendants." Each defendant is entitled to a defense, special to himself. The right of a Receiver depends upon general principles of law. A defendant does not avail himself of these principles, under penalty of losing his right to a trial by jury and to a separate action.

The whole ground upon which the Receiver rests his right to proceed in the anomalous way he has adopted, is, that if he sues at common law, the several stockholders separately, upon their several statutory or contractual ob-

ligations, he will be compelled, as against each, to show that the condition precedent to his right to sue, viz., the legal ascertainment of the deficiency, has been performed, and he will also be compelled to establish his right to recognition in the forum in which he sues. It will be necessary for the Receiver to produce in each case, if the proceedings accomplish what he claims, a certified copy thereof. Would this necessity justify him in depriving the defendants of their common-law right to be sued separately? It would be necessary for him to prove, as against each defendant, the fact of his being a stockholder. Would this justify him in putting all the stockholders into one suit? Every lawsuit involves the necessity of proof by the plaintiff of the facts therein averred. This does not justify him, because he has many suits, in joining all the suitors in one proceeding.

Suppose the complainant had brought forty-seven actions at law against forty-seven defendants, would he have been involved in any difficulty because of the multiplicity of suits which would have justified him in demanding equitable relief? In the one suit, to the same extent as would have been requisite in several, he must prove as against each defendant, the fact of his holding shares, and must meet an issue of whether or not the defendant is a holder and of whether or not he owes the money.

Would he be exposed to any difficulty in establishing by forty-seven arguments, before any of the judges of this court, in case of the forty-seven suits being brought here, the legal principles lying at the basis of his right to proceed, *i. e.*, the conclusiveness of the Minnesota proceedings and the right of the Receiver to be here recognized?

What is meant in most of the cases, by jurisdiction in equity to avoid a multiplicity of suits, is admirably illustrated in Smyth *vs.* Ames, 169 U. S., 518, where the stockholders of a corporation were permitted to file a bill against a corporation and against certain State officials who were seeking to enforce an alleged unconstitutional State law interfering with rates of transportation, because

of the necessity of avoiding a multiplicity of suits. All the parties were before the court who were interested in the question. By its determination in advance, the court prevented the doing of acts out of which suits innumerable would have necessarily sprung.

Another type of cases in which equity has taken jurisdiction to avoid multiplicity of suits, is presented by Hayden *vs.* Thompson, 71 Fed. Rep., 60, where stockholders had received dividends illegally paid out of capital. A Receiver was permitted to join all the stockholders who had thus received these illegal dividends in order to avoid multiplicity of suits. The case was one essentially for a court of equity, because it involved the necessity of taking a complicated account of corporation dealings, in which account all the stockholders against whom the proceedings were instituted were equally interested.

In Hawkins *vs.* Glenn, 131 U. S., 319, a decree was entered in the first instance making an assessment upon the stockholders. Thereafter, in an action at law in another Circuit Court, the stockholder was made to pay the amount of the assessment. There is no difficulty whatever, therefore, in obtaining efficacious relief at common law. As we have said, in another circuit, in Hale *vs.* Hardon, this relief at common law has been actually accorded to the present Receiver.

In Cockrill *vs.* Cooper, 86 Fed. Rep., 7, an accounting as to the transactions of a corporation was essential to any relief. It was pre-eminently necessary that this accounting should be taken in one proceeding. All were equally interested in the results of such accounting, and no injury could possibly result in the shape of destruction of separate defenses, by sustaining the jurisdiction.

In Terry *vs.* Little, 101 U. S., 218, it was held that the liability of the stockholders was not to any particular creditor, but to all, and that therefore, in any original proceeding for its enforcement, it was necessary to resort to a court of equity to marshal the assets and to procure contributions to such extent as should be found necessary under the accounting from all the shareholders.

In Bailey *vs.* Tillinghast, 99 Fed. Rep., 804, the Receiver of an insolvent bank sued in equity to enforce an assessment against stockholders, where such assessment was less than the full amount of their liability. The court quoted approvingly what has been said by Mr. Justice Swayne in Kennedy *vs.* Gibson, 8 Wallace, 498, to the effect that when the whole amount is sought to be recovered, the proceeding "must be at law," and that "where "less is required, the proceeding may be in equity, and "in such case an interlocutory decree may be taken for "contribution, and the case may stand over for the further "action of the court, if such action should prove to be "necessary, until the full amount of the liability is ex-"hausted."

In the Tillinghast case there was a necessity for an accounting, and under such accounting it became necessary for the court to go on and administer complete relief.

The court there said that they could rest the equitable jurisdiction upon the necessity of avoiding a multiplicity of suits. It added that there was a common question in the case between the Receiver and the defendants, viz., the question whether the latter were released from their stock subscriptions by the fact that, whereas the resolution for increasing the stock in the sum of $300,000 was that under which their subscription took place, yet subsequently, by proceedings to which they did not consent, the proposed increase had been reduced to $150,000.

We close our observations by asserting that equity has never assumed jurisdiction of a common-law action and has never forced several people against whom exist several claims resting upon separate contracts, into the defense of one such action, under circumstances like those existing in the present case, which presents an absolute absence of all reasons for pursuing the extraordinary course which has been adopted.

JOHN G. JOHNSON,
For Respondents.

No. 77. October Term, 1902.

Brf. of Johnson for Appellees

Office Supreme Court U. S.
FILED
NOV 6 1902
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

Filed Nov. 6, 1902.

IN EQUITY.

William E. Hale, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Complainant below and Appellant,

vs.

Edward P. Allinson *et al.*, Respondents below and Appellees.

BRIEF FOR APPELLEES.

[Record No. 18,106.]

JOHN G. JOHNSON.

Allen, Lane & Scott, Pro. Phila.

IN THE SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

William E. Hale, as Receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company, Complainant below and Appellant,

vs.

Edward P. Allinson et al., *Respondents below and Appellees.*

October Term, 1902.
No. 77.
[Record No. 18,106.]

APPELLEES' BRIEF.

The present controversy arises out of an attempt in Pennsylvania, by a Receiver who had been appointed by a District Court of Minnesota in a suit which was there instituted by the creditors of an insolvent Minnesota corporation, in which the corporation, the Receiver of its assets and certain resident stockholders were made parties, to collect, from Pennsylvania stockholders not parties to the original suit, an amount equal to the par value of their shares. The Minnesota law imposed a double liability, in case of insolvency, upon the stockholders of corporations. The proceedings in Pennsylvania were by bill in equity. It was claimed therein, that the Minnesota suit finally concluded the appellees, though not parties thereto, as to the amount payable by the holder of each share, though such amount could only be determined judicially, by ascertainment of the indebtedness of

the corporation, the value of its assets and the aggregate and *personnel* of stock contributors.

The liability of holders of shares of certain Minnesota corporations to pay, in case of insolvency, to an amount not in excess of the par value of the shares respectively held by them, such of its indebtedness as cannot be liquidated out of its assets, was created by the Constitution of Minnesota, which thus provides (article X., section 3):—

> "Each stockholder in any corporation (excepting those "organized for the purpose of carrying on any kind of "manufacturing or mechanical business), shall be liable "to the amount of stock held or owned by him."

The Statutes of Minnesota of 1894 (chapter 76, page 1595), thus provide the method of enforcing the liability of stockholders:—

> "(Section 9, section 5897.) Whenever a judgment is "obtained against any corporation incorporated under the "laws of this State, and an execution issued thereon is "returned unsatisfied in whole or in part, upon the com-"plaint of the person obtaining such judgment, or his "representatives, the district court within the proper "county may sequestrate the stock, property, things in "action and effects of such corporation, and appoint a "Receiver of the same."
>
> "(Section 17, section 5905.) Whenever a creditor of "a corporation seeks to charge the directors, trustees "or other superintending officers of such corporation, or "the stockholders thereof, on account of any liability "created by law, he may file his complaint for that pur-"pose in any district court which possesses jurisdiction "to enforce such liability.
>
> "(Section 18, section 5906.) The court shall proceed "thereon, as in other cases, and, when necessary, shall "cause an account to be taken of the property and debts "due to and from such corporation, and shall appoint "one or more Receivers.
>
> "(Section 19, section 5907.) If, on the coming in of the "answer or upon the taking of any such account, it ap-"pears that such corporation is insolvent, and that it has "no property or effects to satisfy such creditors, the court

"may proceed, without appointing any receiver, to ascer-
"tain the respective liabilities of such directors and stock-
"holders and enforce the same by its judgment, as in
"other cases.

"(Section 20, section 5908.) Upon a final judgment in
"any such action to restrain a corporation or against di-
"rectors or stockholders, the court shall cause a just and
"fair distribution of the property of such corporation and
"of the proceeds thereof to be made among its creditors.

"(Section 21, section 5909.) In all cases in which the
"directors or other officers of a corporation, or the
"stockholders thereof, are made parties to an action in
"which a judgment is rendered, if the property of such
"corporation is insufficient to discharge its debts the
"court shall proceed to compel each stockholder to pay
"in the amount due and remaining unpaid on the shares
"of stock held by him, or so much thereof as is neces-
"sary to satisfy the debts of the company.

"(Section 22, section 5910.) If the debts of the com-
"pany remain unsatisfied, the court shall proceed to
"ascertain the respective liabilities of the directors or
"other officers and of the stockholders, and to adjudge
"the amount payable by each, and enforce the judgment,
"as in other cases.

"(Section 23, section 5911.) Whenever any action is
"brought against any corporation, its directors or other
"superintending officers or stockholders, according to the
"provisions of this chapter, the court, whenever it appears
"necessary or proper, may order notice to be published,
"in such a manner as it shall direct, requiring all the
"creditors of such corporation to exhibit their claims
"and become parties to the action, within a reasonable
"time, not less than six months from the first publication
"of such order, and, in default thereof, to be precluded
"from all benefit of the judgment which shall be rendered
"in such action, and from any distribution which shall
"be made under such judgment."

The Northwestern Guaranty Loan Company, a Minnesota corporation, was adjudged insolvent by appropriate proceedings on the twentieth day of May, 1893. A Receiver of its assets was duly appointed under the above statutes.

One Rogers obtained judgment in November, 1893, against the insolvent corporation, and, shortly thereafter, filed a bill in

equity in the District Court of Hennepin County, Minnesota, against the Northwestern Guaranty Loan Company and its Receiver, and against certain resident stockholders. The appellees were not made parties to these proceedings, and it does not appear that any notice of the same was ever given to them until a bill was filed in the Circuit Court of the Eastern District of Pennsylvania.

The Minnesota proceedings were amended from time to time, and several decrees, two interlocutory and a third, alleged to be final, were entered. The dates of these interlocutory decrees were 27th March, 1896, and February, 1897; that of the so-called final decree was 3d November, 1897.

Before the latest decree was entered, about eight hundred creditors intervened and made proofs of their claims.

The Minnesota bill prayed as follows (Record, page 33):—

> "*First.*—That the court decrees notice to be given in "such manner as shall be deemed best, requiring all the "creditors of said defendant, Northwestern Guaranty "Loan Company, to exhibit their respective claims "against the said Northwestern Guaranty Loan Com- "pany herein, and to become parties to this action within "a reasonable time, and that they, in default thereof, be "precluded from all benefit under the judgment which "may be rendered in this action and from any dis- "tribution which shall be made under said judgment "herein; that thereupon the court proceed to ascer- "tain the amounts of the respective claims of such "creditors of said defendant Northwestern Guaranty "Loan Company who shall become parties to this "action, as well as the respective liabilities of said de- "fendant stockholders, on account of their constitu- "tional liability, and the amount of stock held and owned "by them and each of them. And plaintiff further prays "that a proper judgment and decree be entered and "rendered herein against said defendant stockholders "and each of them, for such liabilities as shall be war- "ranted by the law and the evidence, and providing for "the enforcement and sequestration of said liabilities, to "the end that from the proceeds therefrom the attorneys' "fees and the cost of this proceeding be paid in full, and "that said claims of said creditors be satisfied *pro tanto.*

"*Second.*—That the Minneapolis Trust Company, or "some other competent and suitable person, be appointed "Receiver herein, for the purpose of enforcing and col- "lecting such liabilities, and with power and authority to "proceed against said defendant stockholders residing in "other jurisdictions in such other jurisdictions, for the "purpose of enforcing their liabilities on behalf of all the "creditors who shall become parties to this action, and "with further power and authority to distribute the pro- "ceeds in this proceeding between the parties entitled "thereto, after first paying in full out of said proceeds "such reasonable sum as shall by the court be allowed "this plaintiff for compensation for his attorneys for their "services in this proceeding, as well as for all other costs "and expenses herein incurred, not taxable against said "defendants.

"*Third.*—That by a proper judgment and decree herein, "all creditors of said defendant the Northwestern Guar- "anty Loan Company, who have not within the time "fixed by the court herein, exhibited their claims herein "and become parties to this action, be forever de- "barred from any and all benefits of the judgment herein, "and from any distribution to be made under the same.

"*Fourth.*—Plaintiff prays for such other and further "relief herein as to the court shall seem meet and proper, "just and agreeable with equity and good conscience, "including judgment for his costs and disbursements "herein."

By the so-called final decree, it was found that the Northwestern Guaranty Loan Company, a Minnesota corporation, had been duly adjudged insolvent on the 20th May, 1893, and that a Receiver of its assets had been duly appointed; that its total issue of capital stock consisted of twelve thousand five hundred shares of the par value of $100 per share, all whereof were outstanding at the date of the adjudication of insolvency; that said shares were respectively held and owned, to the extent therein specified, by certain resident stockholders, parties defendant; that the total aggregate value of the entire corporate assets applicable to the payment of the corporate indebtedness of the Loan Company, was $440,000, and no more; that the

amount of the principal of the outstanding valid subsisting indebtedness of such Loan Company, at the date of the adjudication of insolvency, was, and still remained, $2,543,689.29; that all of said indebtedness at said date and at the entry of the decree was held by the plaintiff and the several intervening plaintiffs who were therein specified, the amount due to each being specially fixed; that the maximum liability imposed by the Constitution and laws of Minnesota upon corporate stockholders should be imposed and enforced as against each and every stockholder of said Loan Company holding stock therein as of the date of adjudication of insolvency; that each of such stockholders was liable for and should pay and contribute to and for the equal benefit of the ascertained creditors of the said corporation, the sum equal to the par value of the stock held by him at the date of said adjudication of insolvency; that all the stockholders of the said Loan Company, together with their several holdings and the amount for which each was severally liable to contribute, were as set forth in the schedule thereto attached; that each of the creditors therein named should severally recover from the Loan Company the several sums set opposite their respective names; that the creditors therein ascertained should have and recover from the resident stockholders, parties defendant, the respective sums therein specified; that execution upon any or all of said judgments should, upon the application of a Receiver to be appointed, be issued in the name of the above-named creditors, and that any and all funds thereon realized should be paid to said Receiver, to be held by him and disbursed by order of the said District Court.

It was further decided (Record, page 86):—

> "*Tenth.*—That for the purpose of enforcing and collect-
> "ing said judgments and all thereof and any and all lia-
> "bility thereon or in anywise incident thereto, and any
> "and all liability upon the part of non-resident stock-
> "holders of said Northwestern Guaranty Loan Company,
> "against whom no personal judgment for the ascertained
> "liability is herein rendered, and disbursing the amounts
> "so collected as hereinafter provided, W. E. Hale, Esq.,

"has been by the order of this court appointed Receiver, "and has given bond in the sum of $25,000, and qualified "as such Receiver.

"That by the terms of said order of appointment said "Receiver was and is hereby authorized, empowered and "directed to take any and all appropriate or necessary "steps or proceedings for the purpose of collecting the "judgments herein rendered, and was and hereby is au- "thorized, empowered and directed to take any and all "necessary and appropriate steps or proceedings against "the non-resident stockholders of said defendant, North- "western Guaranty Loan Company, against whom no per- "sonal judgment herein has been ordered, for the enforce- "ment and realization upon their aforesaid stockholders' "liability, and to that end said Receiver be, and hereby is "authorized, empowered and directed to institute and "prosecute all such actions or proceedings in foreign juris- "dictions as may be necessary or appropriate to this end."

It was further decided (Record, page 87):—

"*Fourteenth.*—That any and all moneys collected by said "Receiver be held by him, subject to the further order of "this court in the premises.

"*Fifteenth.*—That this court retain jurisdiction of this "cause until adjustment of all and several the rights and "liabilities of the respective parties hereto."

A bill in equity in the United States Circuit Court for the Eastern District of Pennsylvania, against certain Pennsylvania stockholders, was instituted by W. E. Hale, as Receiver, which prayed that each of said defendants (Record, page 13) "be "adjudged liable to pay and contribute to the extent of the "par value of their several holdings of stock for the equal "benefit of the creditors of said corporation." Demurrers were filed by the various defendants which raised the questions which will be discussed in this brief. The Circuit Court sustained the demurrers because of the lack of equitable jurisdiction. The Circuit Court of Appeals affirmed this ruling upon the same ground, but intimated its opinion that the proceedings in Minnesota were not binding upon stockholders

in Pennsylvania not parties thereto, and that the Minnesota Receiver was not authorized to maintain suit in Pennsylvania.

In support of the decree entered in the court below, we submit four propositions:—

I. Upon the appellant's theory that the Minnesota proceedings finally fixed the amount to be paid by the holder of each share, there was no equitable jurisdiction of appellant's demand and no joint cause of action.

II. The Minnesota statutes provided a statutory remedy which was exclusive, which did not permit the proceedings instituted in Pennsylvania.

III. Inasmuch as the appellees were not parties to the proceedings in Minnesota, they were not bound by the same.

IV. An action cannot be maintained in the courts of one jurisdiction by a Receiver appointed in another jurisdiction merely to bring suit, who is not clothed with title to the *rem* in controversy.

I. Upon the appellant's theory that the Minnesota proceedings finally fixed the amount to be paid by the holder of each share, there was no equitable jurisdiction of appellant's demand and no joint cause of action.

It is not pretended by the appellant that the Minnesota proceedings were conclusive against the defendants as to (1) the fact of their being holders of shares to the amount designated, or (2) as to the fact of non-payment of their additional liability. He contended, however, that said proceedings were conclusive (1) as to the amount of the corporation indebtedness; (2) as to the amount and value of the corporation assets first applicable in payment thereof; (3) as to the total amount of outstanding shares which could be called upon for contribution; (4) as to the extent of the holdings of the resident

shareholders actually served in Minnesota; and (5) as to the amount to be paid on account of each share.

The theory upon which the appellant proceeded in the Circuit Court of Pennsylvania was, that the Minnesota proceeding had finally determined every question, saving whether the defendants in Pennsylvania were respectively stockholders and, if they were, whether they had made payment of their liability.

Before discussing the question of whether or not his demand was one which could be enforced in a court of equity, it may be well to consider (1) what was claimed by the bill, and (2) the theory of law as to the scope of the defense and the rights of the complainant upon which it was rested.

FIRST.—*As to what was claimed by the bill.*

It averred that the forty-seven defendants were respectively holders, to the extent in each case designated, of shares of stock of The Northwestern Guaranty Loan Company, a corporation of Minnesota; that twelve thousand five hundred shares at the par value of $100 per share had been issued; that on the twentieth day of May, 1893, the corporation had been duly adjudged insolvent and a Receiver of its corporate assets had been appointed; that since that date it had not had, or conducted, any business; that in the course of its business it had contracted indebtedness to an extent of upwards of $3,000,000; that under and by virtue of the Constitution and general laws of Minnesota each stockholder assumed personal and contractual liability for the indebtedness of the corporation to the amount of the par value of his full holdings of stock for the equal and common benefit of the corporate creditors, to be enforced in proceedings, as indicated by the general statutes of the State; that on or about the first day of November, 1893, an unsatisfied judgment creditor of said company, after a return of an execution thereon unsatisfied, had filed in a District Court of Minnesota County a bill in equity on behalf of himself and all other creditors of said Loan Company against it and against all and

several, the stockholders thereof, for "the purpose of enforc-
"ing the aforesaid liability of such stockholders and to that
"end amongst others for an accounting of the debts and assets
"of said corporation, the ascertainment of the deficiency, the
"apportionment and assessment of such deficiency, amongst
"the several stockholders, and for the appointment of a Re-
"ceiver for the purpose of enforcing and collecting such as-
"sessment or ascertained liability all and several;" that process had been duly served on said corporation and such of the stockholders thereof as resided within the State of Minnesota; that no service had been made upon the defendants; and that said District Court, on the eighth day of February, 1897, had adjudged, *inter alia*, the following matters, viz., that an indebtedness of upwards of $3,000,000 was owing by said Loan Company to its several creditors, that the value of the total assets and properties of the company was $450,000 and no more, that the total outstanding stock of the company was twelve thousand five hundred shares at the par value of $100 each, that the names of the several stockholders, including defendants, and the amount of stock held by each were as specified, that each stockholder was liable to contribute, for the common benefit of the creditors, an amount equal to the par value of the stock held by him, that each of the stockholders within the State of Minnesota should pay and contribute a sum equal to the par value of the stock held by him, that W. E. Hale was appointed Receiver for collecting and enforcing, for and in behalf of all the creditors, the judgments against such Minnesota stockholders and for the purpose of collecting, by such proceedings as might be proper, the ascertained liability of non-resident stockholders of said Northwestern Guaranty Loan Company, over whom the court, by reason of non-residence, had not acquired jurisdiction for the purpose of rendering personal judgment, that said funds thus collected were to be held by the Receiver for the purpose of equal *pro rata* distribution amongst the creditors subject to the further order of the court, and that the court would retain jurisdiction of the cause for the purpose of making other and further orders or decrees in the matter of distribution and otherwise, as

might be necessary to protect the rights of the several parties in the premises.

The bill averred thus (Record, page 13) :—

> "The decree hereinbefore recited ascertaining the necessity for and amount to which stockholders should contribute, is conclusive in that regard on all stockholders of said corporation; that said decree cannot be executed without and beyond the limits of the jurisdiction of the State of Minnesota without the aid and interposition of equity in enforcing said decree in or by ancillary proceeding; that the several defendant stockholders herein are liable to contribute to a fund on behalf of the creditors of said corporation in amounts equal to the par value of their respective holdings of stock."

It prayed as relief (Record, page 13) :—

> "That said defendants and each of them, may, if they can, show cause why they and each thereof should not be adjudged liable, to pay and contribute to the extent of the par value of their several holdings of stock for the equal benefit of the creditors of said corporation."

It will be observed the bill did not claim it was filed to avoid a multiplicity of suits; nor that there were any grounds of defense common to all the defendants. On the contrary, it averred that the proceedings in Minnesota concluded the defendants, and that to the extent they were holders of shares it was their duty to pay, because it had been so adjudged, an amount equal to the par value thereof. It prayed against each, a decree of payment of an amount equivalent to the par value of the shares by him, or her, held. It amounted to nothing more than an attempt to collect, in one suit against all the stockholders, the amount which it was claimed, each was separately obliged to pay. Upon its theory, there was no possibility of a defense other than one special in the case of each stockholder.

SECOND.—*The theory of law as to the scope of the defense and the rights of the complainant upon which the bill rested.*

The appellant rested his bill upon the decision in Hale *vs.* Hardon, 95 Fed. Rep., 747, 754, averring that the law quoted therefrom was correctly stated:—

> "The ascertainments of the debts and assets of the "corporation and the judgments against the resident "stockholders in the parent forum are in no sense per- "sonal judgments against the non-resident stockholders, "but are necessary preliminaries to a recovery in an extra- "territorial proceeding against the non-resident stock- "holders. To enforce, extra-territorially, the individual "stockholder liability created by statute, and to entitle "the creditors, or the parties representing them, to judg- "ment, it is incumbent upon plaintiffs to show that the "ascertainments intended by the statute have been made. "* * * But such constitutional and statutory liability "in contemplation of law is conditioned upon certain "equitable proceedings, which, speaking generally, mean "proceedings to ascertain all the indebtedness, property "and assets of the corporation, to pay out of the assets, "if possible, and if not possible to pay all, to ascertain "how far the assets will go and the relation which "the remaining indebtedness sustains to the maximum "liability of all stockholders, or perhaps of all solvent "stockholders; and in order to recover upon the liability "it must be shown that the contemplated statutory con- "dition has been performed. * * * As to these as- "certainments in which the corporation is interested, in "a proceeding in which the corporation or its successor "is a party and for such purposes representing the stock- "holder, who is a part of the corporation, the stockholder "is bound by the adjudications in Minnesota. * * * "The Minnesota law was a part of the contract which "resulted from the defendant becoming a stockholder, "and as a stockholder, he is bound by such equitable "and legal proceedings in the local courts, and such as- "certainments as to purely corporate matters, as the "statute contemplated. As a part of the implied con- "tract the stockholder agreed that the ascertainments, "which the statute intended and which the situation re- "sulting from insolvency required, should be made in "accordance with the usual and ordinary course of legal

"and equitable procedure in that State. It was not un-
"derstood that the statutory liability should have no force
"unless the non-resident stockholder was made a party
"to the proceedings as to corporate affairs which the
"statute intended and expressly provided should be had
"in the District Courts of Minnesota. Making a nonl
"resident stockholder a party to the contemplated lega-
"and equitable proceeding for such purposes was a thing
"impossible, and a construction requiring it would render
"the statutory liability inoperative at its inception. * * *
"We have no hesitation in holding that the findings and
"decrees of the Minnesota court as to the amount of
"corporate indebtedness, and the amount of indebtedness
"proven or established in the parent proceeding, and
"that the findings and decree as to the rights of the
"creditors are evidence in the proceeding at bar against
"a stockholder, although no service was made upon him,
"or notice given of the proceeding in Minnesota; and
"we have no hesitation in saying that the doctrine is
"established upon principle and by an overwhelming
"weight of authority (which, among other considerations,
"involves the idea of the constitutional guaranty that full
"force and credit shall be given to the judicial proceed-
"ings of every State, and also of enforcement according
"to the law of the home forum), and that such findings,
"judgments and decrees are conclusive, in the absence
"of fraud or collusion.

"* * * The fact was also found below that the de-
"fendant was a stockholder at the date of the adjudica-
"tion of the insolvency of the corporation; and as our
"conclusion is that the proceedings in Minnesota were
"sufficiently comprehensive as to domiciliary adjudica-
"tions and ascertainments, and such as the Constitution
"and statutes of Minnesota contemplated, and such as the
"statutes required, it follows that the defendant's liability
"results by force of the constitutional provision and the
"statutes in respect to which he, by implication, con-
"tracted by becoming a stockholder, and that the plaintiff
"is entitled to recover, provided he is entitled to main-
"tain his action in this jurisdiction as a Receiver or repre-
"sentative of the creditor interests in aid of the parent
"proceeding in Minnesota."

Appellant further quoted from what was decided by the Supreme Court of Minnesota in Hanson *vs.* Davison, 76 N. W. Rep., 254, to this effect:—

"Equitable considerations and the statute require that "an action of the character prescribed by chapter 76 be "brought by and on behalf of all the creditors, and "against the corporation and all of the stockholders of "whom the court has jurisdiction, to determine the "amount remaining due to such creditors, respectively, "after the assets of the corporation have been exhausted; "thereby providing a basis for determining the extent of "the liability of the respective stockholders. The judg- "ment in such original action determining the amount of "the corporate debts remaining unpaid, is binding on all "of the stockholders, whether parties to the action or not, "unless impeached for fraud. A judgment against the "corporation is in effect a judgment against the stock- "holders in their corporate capacity. They are repre- "sented by the corporation in the action. In principle, "there can be no difference in this respect between an "action to enforce an unpaid subscription and one to en- "force a stockholder's liability. The action required to "be brought by chapter 76 is the original action for the "sequestration and distribution of the fund to be derived "from the stockholder's liability, and the decree entered "therein is a final and conclusive determination of the "amount (unless impeached for fraud) for which the "stockholders are liable—not exceeding the maximum "limit of liability as fixed by law. As the amount and "par value of the stock issued and outstanding is a matter "of record, and readily proven in any action, there is "nothing to prevent the prosecution, after such decree is "entered, of an ancillary action in another jurisdiction by "the Receiver appointed to collect and distribute its funds "arising from stockholders' liability in the original "action, or by any other party or person who may be ap- "pointed by the court for that purpose, against any stock- "holder who was not made a party to the original action, "to collect from him the amount of his liability on ac- "count of the debts of the corporation, for the benefit of "all the creditors."

He claimed that what was said by this court in Hancock National Bank *vs.* Farnum, 176 U. S., 640, concerning the effect of a finding, as against the corporation itself, of a fact which when thus found was binding upon all interested in the corporation, is applicable to a case in which a fact was found

as against stockholders, not concerning assets of the corporation, but concerning a matter relevant only *quâ* the liability of stockholders to creditors. He therefore quoted, as the law of his case, what was there said in these words:—

"We do not mean that it is conclusive as against any "individual sued as a stockholder that he is one, or if one, "that he has not already discharged by payment to some "other creditor of the corporation the full measure of his "liability, or that he has not claims against the corpora- "tion, or judgments against it, which he may, in law or "equity, as any debtor, whether by judgment or otherwise, "set off against a claim or judgment, but in other respects "it is an adjudication binding him. He is so far a part "of the corporation that he is represented by it in the ac- "tion against it. Ball *vs.* Reese, 58 Kan., 614. In that "case it was said, correcting an inference which was "sought to be drawn from language in the case of Howell "*vs.* Manglesdorf, 33 Kan., 194, in respect to the effect of "a judgment against a corporation (pages 617-618):—

"'The general holding in this court has been that a "'judgment is final and conclusive between the parties and "'their privies; and we think it must be held that every "'stockholder in a corporation is so far privy in interest "'in an action against the corporation that he is bound by "'the judgment against it. In the absence of fraud and "'collusion, the judgment must be held to be final and "'conclusive against the stockholder if the court render- "'ing it has final jurisdiction. As the judgment was valid, "'the court committed error in allowing the defendants "'to go behind it and contest matters which were con- "'clusively settled by the judgment against the corpora- "'tion.' * * *

"Now, as the judgment rendered in the Kansas court "is in that State not only conclusive against the corpora- "tion, but also binding upon the stockholder, it must, in "order to have the same force and effect in other States of "the Union, be adjudged in their courts to be binding "upon him, and the only defenses which he can make "against it are those which he could make in the courts "of Kansas. The question to be determined in this case "was not what credit and effect are given in an action "against a stockholder in the courts of Rhode Island to "a judgment in those courts against the corporation of "which he is a stockholder, but what credit and effect are

" given in the courts of Kansas in a like action to a similar
" judgment there rendered. Thus and thus only can the
" full faith and credit prescribed by the Constitution of the
" United States and the Act of Congress be secured."

The bill therefore averred that the proceedings in Minnesota were conclusive; and that there was no matter of fact, or of law, in which the divers stockholders were interested as a whole.

It is not within the power of the Receiver to claim that a court of equity has jurisdiction of a matter, by way of avoidance of a multiplicity of suits, which, as he presents it, involves no such question of multiplicity, and no question of common defenses.

Had he presented his bill upon any other theory, claiming that there must be an ascertainment, in the Circuit Court, of the amount to be paid, and that all questions had not been settled in the Minnesota court, it would have failed by reason of what had been previously decided in the Elkhart case (87 Fed. Rep., 252).

It is true that by way of demurrer all the defendants set up a lack of equitable jurisdiction, as well as a claim that they were affected by no proceedings in which they had not been served, in the course of which facts had been found against them, and that a Receiver appointed in a particular litigation has no extra-territorial jurisdiction. This court, however, must determine whether a bill is well grounded in equity, not because of the defenses thereto, but because of the grounds for equitable relief therein stated.

If the Receiver was right in his contention as to the conclusiveness of the proceedings and as to his extra-territorial power, he was entitled to recover against each defendant in an action instituted in a court of common law. If, however, he was not right in his contention in those respects, he was not entitled to proceed in equity or at common law.

Having thus premised, we will discuss the question of whether the case was one within the jurisdiction of a court of equity under four propositions :—

(a.) *The right sought to be enforced by the appellant was not an equitable one.*

(b.) *No decree theretofore made in any court against the appellees was sought to be enforced against them in the bill.*

(c.) *The bill asked nothing more than a money decree, without presenting any equitable ground of relief.*

(d.) *Where there are several and distinct causes of action against different defendants under circumstances such as characterize the present case, the exercise of equitable jurisdiction is not justifiable upon any such grounds as the avoidance of multiplicity of suits, or for any other reason.*

(*a.*) THE RIGHT SOUGHT TO BE ENFORCED BY THE APPELLANT WAS NOT AN EQUITABLE ONE.

In support of his contention that the right which he seeks to enforce is an equitable one, the appellant, in his brief in the court below, said (page 8):—

> "The right, so far as creditors are concerned, is in "common and equal; that the purpose of the liability is "to create a fund, and the obligation of the stockholder "to contribute to that fund; that the liability is not an "asset of the corporation, or enforceable by it or its suc- "cessors in interest, as Receiver, assignee or otherwise; "and, finally, that it is to be made available in the equi- "table proceedings indicated, brought by or on behalf of "the creditors themselves directly, and in such further "proceedings as may be necessary to extend the relief so "as to embrace all stockholders subject to the liability."

We are not dealing with a bill in equity filed by a judgment creditor against the corporation and all the stockholders, seeking to ascertain the extent of the deficiency of the corporation assets and the amount of contribution necessary to be made by the stockholders under their statutory liability. The present bill is based upon no such foundation. It avers that in proceedings alleged to be conclusive, the extent of the contribution of each stockholder was ascertained and a Receiver was appointed to collect from each, the amount therein ascertained to be necessary to be paid by him.

The bill is based upon the duty imposed upon each stockholder, by the statute or Constitution of Minnesota, as a contractual obligation, to pay an amount equal to the par value of his shares. It avers that the maximum of liability, viz., the payment of such double amount, has been conclusively determined. In what possible aspect can this contractual obligation, or statutory duty, be claimed to be an equitable right? Each stockholder enters into an obligation, imposed by the statute because of his holding of shares, to pay, in case of a deficiency of corporation assets, to an extent not exceeding the par value of his shares. After the extent of the payment has been settled by a court of equity, the transaction is precisely as though the statute had originally obliged each stockholder, in case of corporation insolvency, to pay a fixed amount, equal to that thus determined. If the amount was not previously conclusively ascertained, the bill must fail. If, as the appellant claims, it was thus ascertained, nothing remained for the defendant but to pay the designated amount or to show that he was not a stockholder or had discharged his obligation.

It is true the Receiver was seeking to collect, under a duty on his part, after he had collected, to account to another court of equity having control, as was claimed, of the distribution, for the amount of such collections. This, however, did not in any way affect the question of whether the cause of action was equitable or legal. It was the duty of the Receiver to account for, and to distribute, in accordance with the rights of those interested in his collections, whether the latter were made in law or in equity. A trustee may have a right of action against a third person, but the fact that a suit is brought by such trustee does not give jurisdiction to a court of equity if the action is one only cognizable by a court of law.

The method of distribution of the fund, after its collection, through the action of a court having no control over such distribution, does not affect the question of the proper form of the action in the forum of collection.

Concede that the liability of the stockholders to pay is not an asset of the corporation or enforceable by it, we must still

deal with the fact that the method of its collection must be determined by the nature of the liability, and that courts of common law are amply sufficient to give all necessary relief to those resting their claims upon contractual or statutory liabilities.

We must not lose sight of the fact that the present bill began and ended with a demand for the payment of money averred to be due by each person who was a stockholder of the insolvent corporation. After such collection, the Receiver must distribute in another forum, which had no control of the method of collection, and could at best do nothing more than command that the alleged obligation should be collected by its Receiver.

The statutes of Minnesota give to a judgment creditor, in case of the insolvency of a corporation, the right to enforce the statutory liability, after ascertainment of the total amount of the deficiency of corporate assets. The original proceeding must necessarily be in equity, and if, by the court taking the original jurisdiction, all the stockholders can he served, it will have power to make, and to enforce, its decrees against them. As against stockholders not served, however, if the appellant is right in his contention, the court taking original jurisdiction may authorize a Receiver to collect what it shall have found to be due from them, as well as from the stockholders actually served. The Pennsylvania court, under the bill as filed, could deal with nothing except the claim of the Receiver to collect an ascertained and fixed sum of money resulting from a *quasi*-contractual obligation. It could not, and, as appellant claims, it did not, enforce equitable remedies prior to an ascertainment of the sum to be paid. Its jurisdiction, therefore, necessarily, must depend upon the nature of the claim to it presented.

(*b.*) NO DECREE THERETOFORE MADE IN ANY COURT AGAINST THE APPELLEES, WAS SOUGHT TO BE ENFORCED AGAINST THEM IN THE BILL.

We do not care to question the proposition that a court of equity may entertain jurisdiction of a bill against a defendant

which seeks to enforce against him a decree in equity made in another court. This court, sitting in equity, did enforce such anterior decree in the case of Shields *vs.* Thomas, 18 Howard, 253. In that case Shields had appeared as defendant in a Kentucky equity court, where a final decree was entered against him, which was sought to be enforced in the Iowa Federal court of equity. This court dwelt upon the necessity, under the circumstances of the case, for the exercise of equitable jurisdiction in Iowa.

In the present case, however, it is not claimed by the appellant that any decree was ever entered against the defendants. On the contrary, he admits they were not served in Minnesota. He avers that all the prerequisite proceedings necessary to ascertain the amount each holder of shares must pay, had been concluded; and claimed that a person not even decreed to be a stockholder should pay, if found to be a stockholder, the maximum sum required by the statute. So far as regarded any proceeding against the appellees, fixing them specifically with liability, the case in the Pennsylvania court was "*de novo*."

If the theory of the appellant was correct, each stockholder, *quâ* the payment of an amount equivalent to the par value of his shares, was in the position in which a stockholder owing unpaid subscriptions on his stock would have been, after the levy of an assessment covering what was unpaid.

(*c.*) THE BILL ASKED NOTHING MORE THAN A MONEY DECREE. IT DID NOT REST ITS DEMAND UPON ANY EQUITABLE GROUND OF RELIEF.

We concede that a court of equity may, under certain circumstances, entertain jurisdiction of a bill demanding the payment of money. Such jurisdiction will not be entertained, however, simply because money is demanded. On the contrary, if money and nothing more be demanded, and if the bill does not disclose equitable grounds of relief, it will be demurrable.

As we have seen, however, the present bill was framed upon the theory of a duty upon each stockholder to pay the equiv-

alent of the par value of his stock, after ascertainment in Minnesota that the assets of the corporation to the full extent of the equivalent of the par value of all its shares were insufficient for the payment of its debts.

The Pennsylvania court was not asked to find, and, under the framework of the bill could not find, a fact cognizable only, or better there than elsewhere, in a court of chancery.

We concede that where it is necessary to apply to a Chancellor for equitable relief, he may proceed with the whole case thus presented to him and may administer final relief, even to the extent of ordering money to be paid. His right to order the money paid, depends, however, upon some need for equitable relief stated in the bill. No such relief was shown by the bill to be necessary and nothing was asked for, excepting a decree for money.

(*d.*) WHERE THERE ARE SEVERAL AND DISTINCT CAUSES OF ACTION AGAINST DIFFERENT DEFENDANTS UNDER CIRCUMSTANCES SUCH AS CHARACTERIZE THE PRESENT CASE, THE EXERCISE OF EQUITABLE JURISDICTION WAS NOT JUSTIFIABLE UPON ANY SUCH GROUND AS THE AVOIDANCE OF MULTIPLICITY OF SUITS OR FOR ANY OTHER REASON.

The appellant rested his right to equitable relief, largely upon the ground that it was necessary to avoid multiplicity of suits. In support of his contention he showed much learning, considerable ability and very great ingenuity.

It is not necessary for us to enter into a controversy with him concerning certain general propositions, amounting almost to platitudes, which he has heretofore stated. We contend that the burden is upon him to show that he presented by his bill a foundation for equitable jurisdiction. We concede that the right of trial by jury, guaranteed by the Constitution of the United States, does not bar the jurisdiction of a court of equity to such extent as such courts had exercised a jurisdiction which excluded such trial. We do contend, however, that every citizen is entitled to a trial by jury saving in a cause within well-defined limits of equity jurisdiction, and that, unless the circumstances are of such character as require

equity to interpose, he cannot be compelled to fight his litigation in a general battle, involving not merely himself, but other litigants, with whose success, or failure, he has no concern.

The obligation of each stockholder is several and distinct, and rests upon his own special contract with the corporation, implied by reason of statutory provisions imposing liability upon him under certain circumstances. Primarily there is no reason why A., who is indebted to the creditors of a corporation by reason of his contract with them, implied by a statute ordering him to pay a sum not to exceed a specified maximum, in case of deficiency of corporation assets, shall be joined in a suit against B. and C. seeking to enforce against them their separate and distinct contracts. The stockholders are indebted if at all, not jointly, but severally. We have heretofore admitted that it may be necessary to join them all with the corporation in a suit having for its purpose the marshalling of assets, the taking of an account and the determination of the extent of a deficiency. All these things, however, as the appellants claimed, had been done. Nothing in this respect remained incomplete. Why, therefore, if the Receiver was entitled to treat the obligation of each defendant to be the same as if he had agreed to pay specifically an amount equal to the par value of his shares, is he not obliged to sue each, upon his contract separately?

This court, in Kennedy *vs.* Gibson, 8 Wallace, 505, declared:—

> "Where the whole amount is sought to be recovered,
> "the proceeding must be at law. Where less is required,
> "the proceeding may be in equity, and in such a case an
> "interlocutory decree may be taken for contribution," &c.

This declaration, as Judge McPherson showed, was followed in almost the latest case upon the subject, decided by the Circuit Court of Appeals of the Sixth Circuit, in Bailey *vs.* Tillinghast, 99 Fed. Rep., 801.

We would be very sorry to deny that courts of equity are entitled to take cognizance of actions for the purpose of avoiding

a multiplicity of suits. This, however, must not be confounded with the attempt made by the appellant, to induce a court of equity to take cognizance in one suit, of many separate causes of action at common law against many separate defendants, because of the number of the latter. A Receiver of an insolvent bank may find himself in the possession of a large number of promissory notes, given to the bank by many different persons. It would probably be more convenient for him to join them all in one suit in equity, than to bring separate common-law actions against each. No one, however, would suppose, because of the inconvenience resulting from many suits, that he could join them. It might be that every note might raise a question as to its being properly stamped, and that each defendant would defend upon the same ground of improper stamping because of a misunderstanding which had universally prevailed, as to the stamping required, when the notes were executed. It would hardly be contended that because the defense rested upon the same point of law, all the makers of the notes could be joined as defendants in one suit in equity.

As we have said, it is the right of each defendant, to a common-law trial in the case of every litigation not within the cognizance of equity courts, and to insist that the proceedings against him shall be so conducted that he will not be exposed to the expense and inconvenience of a joinder of other persons as defendants, in whose success he has no concern.

If, therefore, the Receiver's case is as he asserts, so peculiar in its character that he should be permitted to avail himself of equitable remedies because of the insufficiency of those afforded by the common law, it is his duty to satisfy the court of the existence of such peculiarity. The burden is upon him, of establishing the existence of that which ought to deprive the defendant of his *prima facie* right to a jury trial and to an action confined to himself.

Upon the appellant's theory, the only defense which can be interposed by any defendant, is the non-holding of the shares, or the fact of payment of what is alleged to be due by him. This defense, in the case of each defendant, is separate and

distinct. There is no community of interest or of defense or in the proof upon which the latter must rest. The effect of the joinder of all the defendants is, to compel each defendant to participate in proceedings more voluminous and extensive than they would be if confined to his own cause. Even if the theory of the appellant be incorrect and if other defenses are open, each defendant will be prejudiced in that part of his case which concerns his separate and distinct defense, by the joinder with others who have no interest therein. It must, therefore, be conceded that a strong case of inability to proceed adequately in a common-law action, must be established by the complainant. In what respect is a court of common law unable, if the Receiver is right as to his ability to collect and as to the conclusiveness of the Minnesota proceedings, to afford adequate relief? The present Receiver, in Hale *vs.* Hardon, found himself able to recover at common law the amount of his claim. He asserts, however, that by joining all the forty-seven defendants in one suit he will avoid multiplicity of actions. If, however, his right is several and distinct as against several defendants, it is his duty to bring as many actions as there are defendants. The fact of his having many claims, does not justify his enforcement of them saving in accordance with settled principles. He pretends that each defendant, as to a part of his defense, can set up the same matter, and that because thereof, all should be obliged to maintain one defense, although the cause of action is several, resting upon separate contracts, and although, as he concedes, each can only deny the existence of liability by himself, because of the non-existence, in his particular case, of the relation from which it is claimed to result.

As we have heretofore said, the right of a Receiver, to claim equitable jurisdiction, depends, not upon the defenses which may be interposed, so much as upon the nature of the case which he sets forth. He claims, as we have said, that there is an absolute, incontestable, duty, on the part of each defendant, if a shareholder, to pay. He does not ask for equitable relief upon the ground that the various defendants are interposing a defense which is common to all and ought to

be settled in one controversy. For this reason it was impossible for him to succeed in his demand that a court of equity, in the present controversy, because of its right under certain circumstances to take jurisdiction of a cause to avoid multiplicity of suits, should take cognizance of the present suit, which did not make any averments of facts out of which the jurisdiction could be evolved. *Non constat* that the defendants would raise any other ground of demurrer than the lack of equity in the bill. The bill, as we have said, must stand upon its own averments.

Apart from this, however, we submit with the utmost confidence, that there existed in the present case none of those circumstances which have induced the courts in the instances cited by him to assume equitable jurisdiction.

It is only necessary to read the cases he cites, and to become apprised of the circumstances under which courts of equity acted, to be satisfied that the present action presented no such situation as demanded the relief in those cases accorded.

A person who avers that some one is about to do some act claimed to be illegal, which if done will create a large number of supposed rights which will require thereafter to be litigated separately, may ask a court of equity to interpose by injunction to prevent the doing of such act, for the purpose of saving such subsequent multiplicity of suits. There is no analogy between such a ground for equitable interposition and that claimed in the present cause.

Again, whilst persons may hold separate claims against a particular property, courts of equity have interposed and have permitted a joinder of all the claimants upon averments that the separate claims rested upon one title as against the party demanding relief.

Other cases can be found in which, as prerequisite to judgment, it was necessary to take complicated accounts, or to ascertain facts, or even legal rights in which many persons were interested where the proceedings could be conducted without prejudice to the rights of any one, and almost demanded the joinder of all concerned.

None of these cases, however, are similar to the present, where a separate contract was sought to be enforced against the defendants who ought to be kept separate, in a suit in equity in which all were joined. The appellant says all the defendants may assert, although his bill does not aver they will, that the proceedings in Minnesota, to which they were not parties, did not affect them, and that a Receiver, appointed in Minnesota, had no right to demand recognition in the court of another State for the purpose of therein enforcing claims.

These defenses, however, were not peculiar to the cause before this court. They are the assertions of general principles of law. To assume equitable jurisdiction in one action, of distinct claims, because the different defendants will avail themselves of general principles of law, would be anomalous.

The title to five or six distinct pieces of real estate, held by five or six different persons, derived from different predecessors, may all rest upon the assertion of the rule in Shelley's Case. Would this justify proceedings in equity to recover possession by a person claiming all of them? All the defendants agree, by demurring, in a defense, that the bill presents no ground for equitable relief. Does this justify their joinder, though the causes of action against them be separate, in one proceeding in equity? We concede that cases may be found in which the courts have held, where a great number of defendants as against the claimant of a whole tract, maintained the existence of a title common to all, that such defendants might be joined in a proceeding in which all would be compelled to assert, or to defend, the common title. No court, however, has held, because of the fact that several defendants, against whom there were several causes of action, appealed to the same settled legal principles, that they could be joined in one suit.

We repeat, therefore, that *prima facie* there was no right to equitable relief in the appellant; that it was his duty to show clearly, that unless accorded equitable relief he would not be able to succeed; and that he utterly failed to establish the inability of courts of common law to grant him all the relief, if any, to which he was entitled. We repeat that, unless

the appellant successfully maintains the burden imposed upon him, each defendant has a right to demand a separate suit against himself in a forum having jurisdiction, and none the less, because many other defendants may rest their defenses upon the same general principles of law to which he will appeal.

We may concede that as common-law remedies develop their inadequacy, equitable relief may be accorded; but we deny that the appellant has shown, in this case, any inadequacy, such as justifies the extraordinary procedure he has pursued.

It is not necessary to consider, in detail, the large number of authorities which the learning of the counsel of the appellant enabled them to assemble in their briefs heretofore filed. We meet them with the general remark that, excepting possibly in the case of Hale *vs.* Hardon alone, we do not challenge their correctness, but claim they furnish no foundation for the demand of equitable relief in the present controversy.

The cases in which one plaintiff has been permitted to proceed in equity against many defendants, or in which many plaintiffs have been permitted to proceed against one defendant, because of a common ground of claim or of defense, are radically different from the present. In many of them the right to relief depended upon the ascertainment of facts in which all the persons joined had a common interest, although the results to each might be distinct. In most of them, the issue of fact common to all could better have been determined in a case in which all were joined, than in separate suits. In very many of them there was a necessity to join all the parties in order to obtain any relief. The cases (and they have almost all involved other equitable reasons for interference) in which a question of law has been held sufficient to justify proceeding in equity because of all being interested alike in its establishment or denial, are those in which such question was only necessary to be determined in the particular case, and was not one of those general principles which constitute part of the general body of law. No assertion of a general principle, such as that no one can be concluded by legal proceedings in which he is not a participant, or that one court is not obliged

to recognize the right therein of a Receiver appointed by another, has ever been held sufficient to give the jurisdiction here claimed.

Outside of the demurrer, which rests upon the want o jurisdiction in equity, the remaining demurrers rest upon the denial of the right of the Receiver to sue in any forum. They rest upon no question of fact. Surely, if the Receiver sued at common law, it would be his duty to prove there had been proceedings which concluded the stockholders, settling their duty to pay the amount demanded, and which entitled him to enforce such duty. The defendants need do nothing until the establishment by the Receiver of the vesting in him of the right of the creditor to proceed, without ability in the defendants to question the amount of his claim. Can a Receiver, because it is necessary for him to establish his right to proceed at all, force a defendant, entitled to the decision of a common-law tribunal, into a court of equity? The cases in which courts of equity have taken jurisdiction have always been those in which the questions of fact, or of law involved, were those which went to the existence of any cause of action, not merely to the capacity in which the plaintiff claimed.

The appellant in his brief in the court below (page 11) said :—

> "The asserted obligation of defendants is referable to "a common origin, *i. e.*, the Minnesota law, constituting "the contract between stockholders and creditors. The "right to assert the obligation is equally referable to a "common origin, *i. e.*, the decree in the parent proceed- "ing ascertaining the conditions precedent to its enforce- "ment as against all stockholders. And finally, the right "of complainant to proceed in behalf of and as represent- "ative of all creditors in interest, presents a common "question equally affecting all the defendants and in "which they are similarly interested. The rights of all "parties in interest have therefore a common origin and "present similar questions of law and fact decisive of the "issues involved."

The Minnesota law, "constituting the contract between "stockholders and creditors," imposes an obligation upon the

stockholders of all corporations. Can Receivers of several corporations collect in one suit in equity against the different stockholders of different corporations, because of the common origin of the obligation, *i. e.*, "the Minnesota law"?

What possible foundation for the exercise of the jurisdiction of a court of equity exists, by reason of the fact that a decree in Minnesota ascertained, if it did ascertain, as appellant claims, conclusively, that it was necessary for each holder of shares to pay an amount equal to the par value of his holding? The condition precedent to a suit at common law, is the ascertainment of the amount per share to be paid by each stockholder. Thus ascertained, the obligation results from the Minnesota statute, not from the Minnesota legal proceedings.

The complainant does, or does not, have a right to proceed because of his appointment as Receiver to collect from each stockholder. If he does not possess such right, he cannot proceed. If he does, the nature of his proceeding must depend upon the nature of his action against each stockholder. Upon his theory, there is no common question, "equally af-"fecting all the defendants." Each defendant is entitled to a defense, special to himself. The right of a Receiver depends upon general principles of law. A defendant does not avail himself of these principles, under penalty of losing his right to a trial by jury and to a separate action.

The whole ground upon which the Receiver rested his right to proceed in the anomalous way he adopted, was, that if he sued at common law, the several stockholders separately, upon their several statutory or contractual obligations, he would be compelled, as against each, to show that the condition precedent to his right to sue, viz., the legal ascertainment of the deficiency, had been performed, and he would also be compelled to establish his right to recognition in the forum in which he sued. It would be necessary for the Receiver to produce in each case, if the proceedings accomplish what he claims, a certified copy thereof. Would this necessity justify him in depriving the defendants of their common-law rights to be sued separately? It would be necessary for him to prove, as against each defendant, the fact of his being a stockholder. Would

this justify him in putting all the stockholders into one suit? Every lawsuit involves the necessity of proof by the plaintiff of the facts therein averred. Does this justify him, because he has many suits, in joining all the suitors in one proceeding?

Suppose the complainant had brought forty-seven actions at law against forty-seven defendants, would he have been involved in any such difficulty, because of the multiplicity of suits, as would have justified him in demanding equitable relief? In one suit, to the same extent as would have been requisite in several, he must have proven, as against each defendant, the fact of his holding shares, and must have met an issue of whether or not the defendant was a holder and of whether or not he owed the money.

Would he have been exposed to any difficulty in establishing by forty-seven arguments, before any of the judges of the court below in case of the forty-seven suits having been brought there, the legal principles lying at the basis of his right to proceed, *i. e.*, the conclusiveness of the Minnesota proceedings and the right of the Receiver to be there recognized?

What is meant in most of the cases, by jurisdiction in equity to avoid a multiplicity of suits, is admirably illustrated by the ruling of this court in Smyth *vs.* Ames, 169 U. S., 518, where the stockholders of a corporation were permitted to file a bill against a corporation and against certain State officials who were seeking to enforce an alleged unconstitutional State law interfering with rates of transportation, because of the necessity of avoiding a multiplicity of suits. All the parties were before the court who were interested in the question. By its determination in advance, this court prevented the doing of acts out of which suits innumerable would have necessarily sprung.

Another type of cases in which equity has taken jurisdiction to avoid multiplicity of suits, is presented by Hayden *vs.* Thompson, 71 Fed. Rep., 60, where stockholders had received dividends illegally paid out of capital. A Receiver was permitted to join all the stockholders who had thus received these illegal dividends in order to avoid multiplicity of suits.

The case was one essentially for a court of equity, because it involved the necessity of taking a complicated account of corporation dealings, in which account all the stockholders against whom the proceedings were instituted were equally interested.

In Hawkins *vs.* Glenn, 131 U. S., 319, a decree was entered in the first instance making an assessment upon the stockholders. Thereafter, in an action at law in another Circuit Court, the stockholder was made to pay the amount of the assessment. There is no difficulty whatever, therefore, in obtaining efficacious relief at common law. As we have said, in another circuit, in Hale *vs.* Hardon, this relief at common law has been actually accorded to the present Receiver.

In Kirwan *vs.* Murphy, 83 Fed. Rep., 280, an injunction was allowed against certain officials proceeding with a survey which it was alleged would result in the destruction of much valuable timber and would be a cloud upon the plaintiff's title, involving him in a multiplicity of suits. The court sustained the jurisdiction, saying:—

> "The very purpose of the proposed survey by the offi-
> "cers of the Government in this case is to establish the
> "right of the Government to the land, as public land,
> "the title to which we think, upon the facts stated in the
> "bill, it has already parted with by issuing its patents
> "therefor; and the fact that there is a controversy in re-
> "lation to it would necessarily, from a business point of
> "view, as every intelligent person knows, be a serious in-
> "jury to the plaintiffs' title and tend to greatly depreciate
> "its market value. No one would want to buy property
> "while thus affected, nor loan money upon it as security.
> "It further appears by the bill that a number of people
> "have settled upon portions of the land described in the
> "bill, and it is evident that if this survey is permitted,
> "and the land again thrown open to settlement, as it may
> "be, the plaintiffs, in order to maintain their title, would
> "be involved in a multiplicity of suits to defend it against
> "the claims of parties who had settled thereon."

The effect of the injunction was to prevent the creation of a number of titles adverse to that of the complainant, which would result in the necessity of a multiplicity of suits.

In Ulman *vs.* Iaeger, 67 Fed. Rep., 983, all the defendants were purchasers of land at a tax sale, which menaced the title of the plaintiff. The court said :—

"In this case it is alleged that there is a common wrong "against the rightful owners of this land, insisted upon by "all of the defendants who were purchasers of the land at "the tax sale. That common wrong involves the title of all "of the numerous purchasers of the lands in controversy. "As an incipent step in the litigation, it becomes neces- "sary to vacate and annul the deeds of these various "purchasers, founded, as it is alleged, upon proceedings "that were not only irregular in not complying with the "statute, but were absolutely void, by reason of the fact "of an alleged interest in them of the judge of the court "who presided at the time they were had. It is doubt- "ful if the last allegation just referred to would be prop- "erly cognizable on the law side of the court, under the "peculiar circumstances of this case. Be that as it may, "it is a very grave charge, and, we think, more properly "belongs to a court of equity, and should be heard in "that forum. If we hold that actions of law should be "brought for the recovery of the lands sold at the tax "sale, it would involve the bringing of suits against each "one of the defendants; or, if they were all impleaded in "one action of ejectment, each one could demand a sep- "arate trial, which would occasion unusual delay, and "greatly increase the cost of litigation. The purpose and "object of this suit in impleading so many in one action "is to prevent oppressive and vexatious litigation, which "is not only unnecessary, but is often unavailing, as it "might prove to be in this case.

"Upon the demurrers the rights to all the parties to "the tax sale would depend upon the same questions of "law. In this connection it is insisted that there is no "privity of interest, by contract or otherwise, between "the demurrants and Ulman and Iaegers, except that "which the law implies, which, under the circumstances "of this case, we hold creates such a privity of interest as "justifies this action. We therefore conclude that, if "there is a remedy at law, this is one of those cases in "which there is also a co-existent remedy in equity, and "that the action may be maintained in either forum, but "that a more adequate remedy would be found in equity; "first, because it is the proper forum in which to raise the

"question of a cloud upon the title, and to obtain relief "by a decree of the court removing the same; and, sec- "ond, because the object is to vacate and annul deeds "that might be used in the chain of title in an action of "law."

In Cockrill *vs.* Cooper, 86 Fed. Rep., 7, 13, it was said:—

"Another important question which is raised by the "demurrer and was discussed at some length on the argu- "ment, is whether the wrongs complained of in the bill "may be redressed in equity, or whether a court of law is "alone competent to afford relief. In behalf of the ap- "pellees is it urged, in substance, that, as the directors "of a corporation are not vested with the title to its "property and effects, they are not trustees, but mere "agents of the corporation, and that an action brought "against them by the corporation or its Receiver to re- "cover damages for mismanagement of the corporate "affairs is necessarily one of legal cognizance, which can "only be maintained at law. It may be conceded that "directors are not technically trustees, because they "are not vested with a title to the corporate property, "and that their relation to the corporation which "they represent is that of agents, and that for "many acts of misfeasance and nonfeasance they can "be sued at law. But it does not follow from this "concession that the jurisdiction of courts of law "over directors is so far exclusive as to prevent courts of "equity, under all circumstances, from affording redress "for similar wrongs. It is admitted, as we understand, "even by those courts which have taken the most ad- "vanced ground in support of the jurisdiction at law, that "cases may arise where the obstacles in the way of ob- "taining speedy and complete relief at law for illegal and "negligent acts of directors are so great as to justify a re- "sort to equity. O'Brien *vs.* Fitzgerald, 143 N. Y., 377, "38 N. E., 371; (*Id.*, *Sup.*) 39 N. Y., Supp. 707; *Id.*, 150 "N. Y., 572, 44 N. E., 1126; Dykman *vs.* Keeney (N. Y. "App.), 48 N. E., 895. In the case of Hayden *vs.* Thomp- "son, 36 U. S. App., 361, 17 C. C. A., 592, and 71 Fed., "60, this court upheld the right of a Receiver of an in- "solvent National bank to maintain a bill in equity "against the shareholders of the bank, collectively, to re- "cover dividends which had been paid in violation of

"section 5204 of the Revised Statutes. The right to sue "in equity was maintained on the ground of avoiding a "multiplicity of actions; also, on the ground that the "suit was one to redress a fraud and breaches of trust; "and, generally, because the remedy at law was inade- "quate. Many other courts have entertained bills in "equity, or have asserted their right to do so, for the "purpose of compelling the directors of a corporation to "make good losses which the corporation had sustained "by reason of their unauthorized, negligent or fraudulent "acts. Briggs *vs.* Spaulding, 141 U. S., 132, 11 Sup. Ct., "924; Hornor *vs.* Henning, 93 U. S., 228; Stone *vs.* "Chisholm, 113 U. S., 302, 5 Sup. Ct., 497; Robinson *vs.* "Hall, 25 U. S. App., 48, 12, C. C. A., 674, and 63 Fed., "222; Hodges *vs.* Screw Co., 1 R. I., 312; Ackerman "*vs.* Halsey, 37 N. J. Eq., 356; Williams *vs.* McKay, 40 "N. J. Eq., 189; Crown *vs.* Brainerd, 57 Vt., 625; Swent- "zel *vs.* Bank, 147 Pa. St., 140, 23 Atl., 405, 415; Brinck- "erhoff *vs.* Bostwick, 99 N. Y., 185, 1 N. E., 663; *Id.*, "105 N. Y., 567, 12 N. E., 58; Schley *vs.* Dixon, 24 Ga., "273; Bank *vs.* Bosseiux, 3 Fed., 817; Welles *vs.* Graves, "41 Fed., 459; Bank *vs.* Wade, 84 Fed., 10; Stephens *vs.* "Overstolz, 43 Fed., 771, 773. Indeed, if there is any "conflict of opinion touching the power of a court of "chancery in this respect, it arises over the circumstances "that shall be deemed sufficient to warrant its exercise. "It is doubtless true that a stronger showing, by allega- "tion and proof of the necessity for equitable relief, is re- "quired in some jurisdictions than in others; but the "right of a court of equity to exercise jurisdiction in "suits brought against directors, when the remedy at law "is, for any reason, not fully adequate, cannot be success- "fully denied. The truth is that the office and functions "of a director are so much akin to those of a trustee that "in many cases no substantial reason can be given for "exempting directors from that degree of control by "a court of chancery which such courts ordinarily "exercise over trustees. The doctrine is well settled "in the Federal courts that in those cases where "the right of a court of equity to afford redress for "wrongful acts depends upon the inadequacy of the "legal remedy, courts of equity may exercise jurisdic- "tion, unless the legal remedy is 'as plain, * * * "'practical and efficient to the ends of justice and its "'prompt administration as the remedy in equity.' In "determining whether a suitor should be permitted to "sue in equity, the Federal courts have always attached

"much importance to the fact that the remedy in the "latter forum, as compared with the remedy at law, 'will "'save time and expense and a multiplicity of suits, and "'settle finally the rights of all concerned in one litiga-"'tion.' In other words, the argument *ab inconvenienti* "is never overlooked, but is given great weight. Boyce's "Exrx. *vs.* Grundy, 3 Pet., 210, 213; Oelrichs *vs.* Spain, "15 Wall., 211, 228; Preteca *vs.* Land Grant Co., 4 "U. S. App., 326, 330, 1 C. C. A., 607, and 50 Fed., "674; Hayden *vs.* Thompson, 36 U. S. App., 361, 368, "17 C. C. A., 592, and 71 Fed., 60. If these tests are "applied to the case in hand, we think it may be safely "asserted that the Receiver is entitled, on the showing "made by the bill, to invoke the remedial powers and "processes of a court of chancery to redress the wrongs "of which he complains. The proceeding is brought "against sixteen directors, or their personal representa-"tives, whose respective terms of service were not identi-"cal, except in four cases. If the Receiver is compelled "to sue at law, numerous actions must be brought, and "very likely several separate actions would have to be "brought against some of the directors to comply strictly "with the rules of procedure at law governing the joinder "of parties. It is also fair to infer from what is stated in "the bill that the excessive loans therein complained of "were inaugurated by one set of directors, and either "continued, renewed or enlarged by another, so that a "suit brought against any one of the directors would "probably involve an inquiry into the proceedings of the "board of directors and into many of the financial trans-"actions of the bank for the entire period during which "its affairs are alleged to have been mismanaged. If the "legal remedy is pursued it is probable, therefore, that "the Receiver would find it necessary, in preparing his "proof in numerous cases, to travel over much of the "same ground in each case, while it is certain that the "burden and expense of the litigation would be largely "increased, and that the litigation itself would be need-"lessly prolonged and delayed. The right to sue in "equity, however, does not depend altogether upon the "consideration last mentioned. One charge contained "in the bill is that the directors on several different "occasions declared and appropriated dividends in viola-"tion of section 5204 of the Revised Statutes. An in-"vestigation into the merits of this charge will necessarily

"involve a critical inquiry into the financial condition of "the bank on each of said occasions; and as this court "held in Hayden *vs.* Thompson, 36 U. S. App., 361, 369, "17 C. C. A., 592, and 71 Fed., 60, that is an inquiry "which is peculiarly appropriate to a court of chancery, "since an account of any considerable length or intricacy "cannot be stated before a jury with that degree of fair- "ness and accuracy which is necessary, or at least desir- "able, in a judicial proceeding. We are led to the conclu- "sion, therefore, that the legal remedy for the grievances "alleged in the bill is neither as practical and efficient, "nor as conducive to the speedy and correct administra- "tion of justice, as the remedy obtainable in equity. In "the latter forum it will be possible in a single proceed- "ing, and with much less labor and expense, to measure "the responsibility of each director for the losses which "the bank may have sustained in consequence of the "alleged negligent and unauthorized acts of the directors, "and at the same time to adjust all rights and equities of "the directors as between themselves and as between "them and the Receiver, with reasonable accuracy, and "with a close approximation to exact justice. In a case "of this character such a result cannot be obtained at "law. In conclusion, on this branch of the case, it is "proper to add that for obvious reasons courts of equity "are best adapted to adjust controversies such as usually "arise between Receivers of insolvent corporations and "the directors and managers of such concerns. The re- "medial processes of a court of chancery are of special "utility in such cases, since it is usually found necessary, "in the course of such proceedings, to unravel many "irregular and intricate transactions to the end that the "responsibility for losses which have been sustained "through the careless or fraudulent acts of directors or "other managing officers may be located where it of right "belongs. In a court of law there is always a greater "probability that the guilty will escape detection, or that "the innocent may be made to suffer for the wrongful "acts of others. For this reason it seems evident that "Receivers and assignees of insolvent corporations will "be embarrassed and delayed in the discharge of their "duties, that the creditors of such concerns will in many "cases sustain loss, and that equal and exact justice will "not always be done if the right of such officers to invoke "the remedial powers of a court of chancery in aid of the

"administration of the trusts that have been committed
"to their charge is denied. The public interest, there-
"fore, seems to demand that the right of such officers to
"sue in the forum of equity should neither be viewed
"with disfavor nor denied on slight or technical grounds.
"It is sufficient to say that in the present case we have
"discovered no adequate reasons for denying the com-
"plainant's right to equitable relief."

It will be observed that the Cockrill case was one in which an accounting as to the transactions of a corporation was essential to any relief. It was pre-eminently necessary that this accounting should be taken in one proceeding. All were equally interested in the results of such accounting and no injury could possibly result in the shape of destruction of separate defenses, by sustaining the jurisdiction.

In Terry *vs.* Little, 101 U. S., 218, this court held that the liability of the stockholders was not to any particular creditor, but to all, and that therefore, in any original proceeding for its enforcement, it was necessary to resort to a court of equity to marshal the assets and to procure contributions to such extent as should be found necessary under the accounting from all the shareholders.

In Flash *et al. vs.* Conn, 109 U. S., 380, under a statute which permitted any creditor to proceed, this court said:—

"Lastly, it is objected that the declaration sets out a
"case which should have been prosecuted in equity and
"not at law. There is no ground for this objection to
"rest on. In the cases of Pollard *vs.* Bailey, 20 Wall,
"520; Terry *vs.* Tubman, 92 U. S., 156, to which we are
"referred in its support, the liability of the stockholders
"was in proportion to the stock held by them. Each
"stockholder was therefore only liable for his proportion
"of his debts. This proportion could only be ascertained
"upon an account of the debts and stock and a *pro rata*
"distribution of the indebtedness among the several
"stockholders. This, the court held, could only be done
"by a suit in equity.

"But in this case the statute makes every stockholder
"individually liable for the debts of the company for an
"amount equal to the amount of his stock. This liability

"is fixed, and does not depend on the liability of other "stockholders. There is no necessity for bringing in other "stockholders or creditors. Any creditor who has re- "covered judgment against the company and sued out an "execution thereon, which has been returned unsatisfied, "may sue any stockholder, and no other creditor can. "Such actions are maintained without objection in the "courts of New York, under section 10 of the statute "relied on in this case. Shillington *vs.* Howland, 53 "N. Y., 371; Weeks *vs.* Suydam, 64 N. Y., 173; Handy "*vs.* Draper, 89 N. Y., 334; Rocky Mountain National "Bank *vs.* Bliss, *Id.*, 338."

In Hyman *vs.* Wheeler, 33 Fed. Rep., 629, the purpose was to test the validity or invalidity of a title in which all the parties who were summoned were interested. All claimed or denied the same title. The "*rem*" being practically the same, although different parties held different interests therein, the court assumed equitable jurisdiction of the whole "*rem*" and settled the rights thereto as against, and between, all the parties claiming thereunder. It said:—

"It is claimed by counsel that there is no unity of in- "terest on the part of the various defendants; that because "one man has a claim to one piece of ground, and from "that asserts title to a portion of this vein, his contro- "versy with the plaintiff is entirely independent and dis- "tinct from the controversy with another man, who has "another piece of ground, and upon his claim to that "ground asserts a right to perhaps a distinct portion of "this vein. Very many authorities were presented and "discussed. I think it impossible to harmonize them all, "and therefore do not stop to comment upon them. The "case of Railroad Co. *vs.* Dyer, 1 Sawy., 641, contains "what to my mind is very wholesome and salutary doc- "trine in respect to these matters. It lays down the "proposition that where there is a single title to a con- "tinuous property, and that title rests upon one state of "facts, one grant; and there are many persons who, with "inferior titles or claims, are threatening litigation, al- "though their claims may spring from different sources, "a court of equity has power, in order to give to the "holder of this single property the full enjoyment of his

"property, to summon all such parties into a single suit, "and in that by decree establish the plaintiff's title, and "restrain all the defendants from further litigation or "interference. It is the only way ofttimes where a man "can be protected in the beneficial enjoyment of his prop- "erty. If each individual claimant, as, in that case, a "number of squatters along the line of a railroad, were "permitted to maintain his independent action against the "railroad company, the cost and the time and the worry "of the litigation would seriously impair the value of the "grant to the company; and so, according to the state- "ments that are made here, with a knowledge of the ex- "pensiveness of this mining litigation and the length to "which it may be continued, it may well be, as the com- "plainant asserts, that if every claimant is permitted "to carry on his separate action of ejectment, with the "two and possibly three trials which the law gives "therein, the value of the property, which the Govern- "ment has granted him, will be practically destroyed. I "think, therefore, that following that decision, it cannot "be said that the fact that these defendants have various "interests prevents a court of equity from calling them "in.

"Neither can it be said that there is no equity in "the bill. Equity discountenances a multiplicity of "suits, that is one of the grounds of its jurisdiction; and "it aims, by restraining a multiplicity of suits, to give to "the owner of the property the beneficial enjoyment of "it, and to enable him to get the benefit of its ownership, "rather than waste it in many and diverse suits."

In Bailey *vs.* Tillinghast, 99 Fed. Rep., 804, the Receiver of an insolvent bank sued in equity to enforce an assessment against stockholders, where such assessment was less than the full amount of their liability. The court quoted and followed what had been said by Mr. Justice Swayne, speaking for this court, in Kennedy *vs.* Gibson, 8 Wallace, 498, to the effect that when the whole amount is sought to be recovered, the proceeding "must be at law," and that "where less is required, "the proceeding may be in equity, and in such case an inter- "locutory decree may be taken for contribution, and the case "may stand over for the further action of the court, if such

"action should prove to be necessary, until the full amount of "the liability is exhausted"

In the Tillinghast case there was a necessity for an accounting, and under such accounting it became necessary for the court to go on and administer complete relief.

The court there said that they could rest the equitable jurisdiction upon the necessity of avoiding a multiplicity of suits. It added that there was a common question in the case between the Receiver and the defendants, viz., the question whether the latter were released from their stock subscriptions by the fact that, whereas the resolution for increasing the stock in the sum of $300,000 was that under which their subscription took place, yet subsequently, by proceedings to which they did not consent, the proposed increase had been reduced to $150,000. The court said:—

> "If the Receiver was compelled to bring separate suits, "it would entail a vast expense upon the fund in trying "over and over again the identical questions of law and "fact with each stockholder, and with no substantial ad- "vantage to him, but injury, rather, in the increased cost "in the immediate suit, and the larger burden upon the "fund, created by the many suits against the others.
>
> "Nor is it necessary, as counsel seem to suppose, that "there should be any privity of interest between the "stockholders other than that in the question involved "and the kind of relief sought, the right of their claims "being common to them all, in order to bring the case "within the jurisdiction."

It further said:—

> "It is true that there are occasional cases where it seems "to have been supposed that there must be some commu- "nity of interest, some tie between the individuals who "make up the great number; but the great weight of "authority is to the contrary, and there is a multitude of "cases which either in terms deny the necessity of such "a fact or ignore it by granting relief where the fact did "not exist. And, indeed, it is difficult to find any reason "why it should be thought necessary. It has no rele- "vancy to the principle or purpose of the doctrine itself,

"which stands, not merely as a makeweight when other "equities are present, but as an independent and substan- "tive ground of jurisdiction."

In DeForest *vs.* Thompson, 40 Fed. Rep., 375. it was said:—

"It is alleged in the original and first amended bill in "this cause that the plaintiff was the owner of sixty thou- "sand acres of land lying mostly in Boone County, in this "State, a part of which is in controversy in this suit; that "for the years 1869 and 1870 it was returned delinquent "by the sheriff of Boone County for the non-payment of "taxes thereon, in the name of the plaintiff; that on the "twelfth day of October, 1871, it was sold by the sheriff "of Boone County for the non-payment of taxes thereon, "and was purchased by the State, not being redeemed by "the owner within the time prescribed by law; that the "land was certified by the then Auditor of State 'as land "'within said Boone County, forfeited to the State of "'West Virginia in the name of Burr Wakeman, for the "'non-payment of the taxes thereon for the years 1869 and "'1870;' that afterwards the defendant, Thompson, Com- "missioner of School Lands for Boone County, filed his "petition in the Circuit Court for that county to have the "said land sold for the benefit of the school fund, and, a "decree being obtained for that purpose, the Commissioner "sold a portion of the land and made a conveyance to "the purchasers thereof. The bills allege numerous irreg- "ularities and illegalities in the proceedings as reasons "why the sales and deeds should be declared illegal and "void. After the filing of the original and the first "amended bills the plaintiffs allege that they discovered "other errors, irregularities and illegalities in the proceed- "ings of the sheriff and recorder of Boone County in "relation to the sale of the land and the report thereof to "the Recorder by the sheriff, and the recordation thereof "by the Recorder, which would render the proceedings "absolutely null and void, and that in fact no forfeiture of "said tract of land ever occurred. * * *

"The next position insisted upon by the defendants to "defeat the plaintiffs' action is that, if the plaintiffs' posi- "tion is true, that the proceedings were absolutely void "under which the lands were sold, then the plaintiffs "have a complete and adequate remedy at law, and this

"court, sitting in equity, is without jurisdiction to grant "the relief asked for. It will be observed that the lands "in question were sold by virtue of the proceedings in "the Boone Circuit Court, and passed into the hands of "numerous parties, each of whom claims under a sale "made under the order of that court relating to the whole "of the land in dispute. The State court based its pro- "ceedings upon steps previously taken upon the forfeiture "of these lands as delinquent lands. The lands prior to "the alleged forfeiture and sale under the order of the "court constituted one body, and were held by one per- "son, Burr Wakeman. If the attempt to forfeit them was "not in law a forfeiture that divested his title, or if the "proceedings in the Boone Circuit Court were unauthor- "ized and void, then the title as to all the lands remains "in Wakeman, and passed under his will to the plaintiffs. "Each defendant's title depends upon the same questions, "and those questions all have relation to the proceedings "in the Boone Circuit Court and to the attempt to forfeit "the lands for non-payment of taxes. It is a case of one "person having a right against a number of persons, which "may be determined as to all the parties interested by one "suit. If the plaintiffs brought ejectment against one of "defendants and succeeded, the judgment would not "conclude the other defendants, although the question in "each case would be precisely the same. But if the plain- "tiffs can, by one comprehensive suit, have their rights "declared and secured as to all the lands, the possession "of which is withheld by the defendants, each claiming "a particular parcel, but all basing their claims upon the "same proceedings instituted by the officers of the "State, may they not invoke the jurisdiction of a court "of equity upon the familiar ground that by suing in "equity and bringing all the defendants before the court "in one action they can avoid a multiplicity of suits? I "think they can. 1 Pom. Eq. Jur., sections 245–269, "inclusive."

The observations which we have made upon the case of Hyman *vs.* Wheeler are equally applicable to this case.

The same observation may be made concerning the case of Osborne *et al. vs.* Wisconsin Cent. R. Co., 43 Fed. Rep., 824, in which it was said:—

"While the plaintiffs have separate and distinct inter- "ests because of their respective claims of ownership of

"separate and distinct tracts of land, they have a com-
"munity of interest in the subject-matter of the contro-
"versy relating to these lands, and a common source of
"title, namely, the action of the Land Department open-
"ing these lands for entry under the homestead and pre-
"emption laws of the United States. They have thus a
"community of interest in the questions of law and fact
"upon which the issue between the railroad company
"and each plaintiff depends. The company's claim is
"good or bad against all the plaintiffs, as it may be good
"or bad against any one of them; and yet a judgment
"in favor of one, in an action of ejectment brought by
"the company, would not avail the others in separate
"actions of ejectment against them. The case is pecu-
"liarly one in which the jurisdiction of a court of equity
"may be invoked in order to avoid a multiplicity of
"suits. It belongs to a class 'where a number of per-
"'sons have separate and individual claims and rights of
"'action against the same party, but all arise from some
"'common cause, are governed by the same legal rule,
"'and involve similar facts, and the whole matter might
"'be settled in a single suit brought by all these persons
"'uniting as co-plaintiffs, or one of the persons suing
"'on behalf of the others, or even by one person suing
"'for himself alone.' 1 Pom. Eq. Jur., sections 245, 255,
"257, 268, 269, 273, and authorities cited in notes to
"these sections. Crews *vs.* Burcham, 1 Black, 352, 357.
"In such cases the plaintiffs are united by a common
"tie, created by identity of interest in the decision of the
"same questions of law and of fact, and have a common
"adversary. The fact that the several tracts of land here
"in dispute were entered at different dates and by differ-
"ent persons, is of no consequence, as the validity of
"each entry, as against the railroad company, depends
"upon precisely the same questions of law and fact."

In San Lung *et al. vs.* Jackson, 85 Fed. Rep., 502, a Collector of Customs, proceeding illegally, was enjoined at the instance of several persons from proceeding to carry out the provisions of an illegal Act. The syllabus reads:—

"A number of persons having distinct interests in a
"quantity of tea about to be destroyed by a Collector of
"Customs, under the Act forbidding importation of im-
"pure teas, may, on the ground of preventing a multi-

"plicity of suits, maintain a suit in equity to enjoin the "Collector, since they have a common interest in the "question whether he has legal authority to commit "the act."

We close our observations under this head by asserting that equity has never assumed jurisdiction of a common-law action and has never forced several people against whom exist several claims resting upon separate contracts, into the defense of one such action, under circumstances like those existing in the present case, which presents an absolute absence of all reasons for pursuing the extraordinary course which has been adopted.

Even if the case was cognizable in equity, it was multifarious, because of the joinder of the parties severally liable, in a joint action, with the result of all being compelled to litigate in one proceeding, defenses which the appellant claimed must necessarily be individual and separate.

II. The Minnesota statutes provided a statutory remedy which is exclusive, which did not permit of the proceedings instituted in Pennsylvania.

Before discussing this proposition we will state the course of decisions in Minnesota as to the form of proceeding required by the Minnesota statutes as rendered antecedently to the entry of the final decree in the Rogers suit in Minnesota.

In Allen *vs.* Walsh, 25 Minn., 543, decided more than twenty years ago, it was said:—

"It is reasonable to suppose that the legislature in- "tended by those sections (referring to the sections here- "tofore given) to provide an efficient and sole remedy for "enforcing payment of the debts of an insolvent corpora- "tion out of the individual liability of its stockholders, "for the rule is well settled that where a statute which "created a right also prescribes an adequate remedy, the "latter is to be taken as the exclusive one; that the chap- "ter which gives this remedy forms a part of the general "statutes, which were adopted in 1866 and which contain "the enactment that creates the statutory liability, and

"therefore the rule referred to is fairly applicable. It is "shown, from an examination of these sections, that the "remedy they provide contemplates a single action, in "which all persons having or claiming any interest in "the said action shall be joined or properly represented "and their rights, equities and liabilities finally settled "and determined."

This decision, as settling the law of Minnesota, was referred to, in various subsequent decisions, during a period of twenty years, until the case of Hanson *vs.* Davison, adjudicated by the Supreme Court of Minnesota, on the twenty-sixth day of July, 1898 (76 N. W. Rep., 254). It was there said by the majority of the court, against a vigorous dissent, that it had never been decided theretofore that if a stockholder had been omitted from the original action because a court could not acquire jurisdiction of him or for any other cause, that his liability could not be subsequently enforced against him by bringing him, or his property, into the original action, if found later within the jurisdiction of the court, or, if he could only be found, in another jurisdiction, by proceeding against him alone in an ancillary action in any other State in which he might be found if the comity of that State would permit. The court said there was nothing in the nature of the stockholders' individual liability, or the method of enforcing it, to prevent such enforcement, against him if omitted from the original action; and that there was nothing in the statute which justified the conclusion that if his liability was not adjudged in the original action because he was a non-resident, an ancillary action might not be brought against him thereafter, if the amount for which stockholders were individually liable had been determined in the original action. It further said the action required to be brought, by chapter 76, was the original action for the sequestration and distribution of the fund to be derived from stockholders' liability; that the decree entered therein was a final and conclusive determination of the amount (unless impeached for fraud) for which the stockholders were liable; and that as the amount and par value of the stock issued and outstanding was a matter of record, and readily

proven in any action, there was nothing to prevent the prosecution, after such decree was entered:—

> "Of an ancillary action in another jurisdiction by the Re-
> "ceiver appointed to collect and distribute its funds aris-
> "ing from the stockholders' liability in the original action,
> "or by any other party or person who may be appointed
> "by the court for that purpose, against any stockholder
> "who was not made a party to the original action, to col-
> "lect from him the amount of his liability, on account of
> "the debts of the corporation, for the benefit of all of the
> "creditors."

In dealing with an objection that a stockholder might assert he was not bound by the original procedure because his right of contribution could not be worked out in such ancillary action, the court said that if he were called on to pay only his *pro rata* share of the deficiency, treating all of the stockholders as solvent, the objection would fail; but that in any event his right to contribution in case he should be required to pay more than his share, as between himself and the other stockholders, was subordinate to the equity of the creditors, as he could secure such contribution by appearing in the original action.

The court lost sight of the fact that the proceedings by which the foreign stockholder was held concluded, had been terminated antecedently to any notification to him.

All said by the Minnesota court, in Hanson *vs.* Davison, concerning a right to proceed in another jurisdiction, against stockholders not made parties to the original proceedings, was *obiter dictum*. The question to be decided was whether an independent proceeding could be maintained in Minnesota against a stockholder non-resident at the time of the entry of the decree, who had become subsequently subject to the jurisdiction by reason of property to her belonging being found in the State. The lower court held that such original proceeding could not be maintained because the remedy, if any, was in the original action. This decision of the lower court was sustained. It was not in any way necessary to determine whether there could or could not be proceedings against for-

eign shareholders. All decided, and all that could be decided, was that there could be no independent proceeding within the State.

The court may have been induced to express, by an *obiter dictum*, views in direct violation of what had so long been supposed to be the Minnesota law, through the persuasive influences of the *amici curiæ*, viz., the Receiver now appealing to this court and his present counsel.

The *obiter dictum* would not be binding upon the lower courts of Minnesota, much less is it binding upon the courts of any other jurisdiction. Where it had previously been necessary to decide the question, the Minnesota Supreme Court had held that the statute prescribed one remedy, to be worked out in the District Courts of Minnesota against all the parties.

In no event is this court obliged, against reason, to the destruction of the rights of suitors, to follow the changing decisions of a State court in the interpretation of its statutes, where such change occurs after the rights of all parties have become fixed under earlier interpretations.

We submit, therefore, that even if the Supreme Court of Minnesota had *decided* in 1898, after the proceedings in the present suit in Minnesota had been concluded, that rights resulted therefrom which had been previously held not to exist, the present appellees would not be bound, and that this court would not be compelled to hold them bound, by the later construction.

The question we are now considering has been very elaborately and ably discussed by the Supreme Court of Wisconsin in Finney *vs.* Guy, 82 N. W. Rep., 595, decided 20th March, 1900, adversely to the theory that courts of other jurisdictions are obliged to follow the dictum in Hanson *vs.* Davison.

We need not, in this court, cite authority for the proposition that where a statute confers a right and gives a remedy, such remedy is exclusive. The only question we need discuss is, whether the Minnesota statute did prescribe a remedy.

The double liability of the stockholders, in case of insolvency, is not an asset of the corporation. The Receiver of

the corporation does not take the same. It is a right conferred upon the creditors to insist, within the limit of double liability, upon payment by stockholders, outside of the corporate assets, to such extent as there shall be a deficiency thereof. The right is that of the creditors, and the remedy can only be accorded to them under proceedings by them instituted. Culling from the Statutes of 1894, chapter 76, such provisions as are applicable, we find the following:—

"Whenever a creditor of a corporation seeks to "charge the directors, trustees or other superintending "officers of such corporation or the stockholders thereof, "on account of any liability created by law, he may file "his complaint for that purpose in any district court "which possesses jurisdiction to enforce such liability. "* * * The court shall proceed thereon as in other "cases; and, when necessary, shall cause an account to "be taken of the property and debts due to and from "such corporation, and shall appoint one or more Re- "ceivers. * * * If on the coming in of the answer "or upon the taking of such account it appears that such "corporation is insolvent and that it has no property or "effects to satisfy said creditors, the court may proceed "without appointing any Receiver to ascertain the respec- "tive liabilities of such directors and stockholders and en- "force the same by its judgment, as in other cases. * * * "Upon a final judgment in any such action to restrain "a corporation, or against directors or stockholders, the "court shall cause a just and fair distribution of the prop- "erty of said corporation and of the proceeds thereof to "be made among its creditors. In all cases in which the "directors or other officers of the corporation or the "stockholders thereof are made parties to an action in "which a judgment is rendered, if the property of such "corporation is insufficient to discharge its debts, the "court shall proceed to compel each stockholder to pay "in the amount due and remaining unpaid on the shares "of stock held by him or so much thereof as is necessary "to satisfy the debts of the company. If the debts of the "company remain unsatisfied, the court shall proceed to "ascertain the respective liabilities of the directors or "other officers and of the stockholders and to adjudge "the amount payable by each and enforce the judgment "as in other cases."

A provision is then made for bringing in all the creditors after notice and for precluding those who do not exhibit their claims and become parties to the action within six months from the first publication of the order.

No Receiver is to be appointed, excepting of the property of the corporation, including the debts due to the same. The words, "and when necessary * * * shall appoint one or "more Receivers," are applicable to a case in which there shall be corporate assets; not to one in which the creditor is proceeding to recover the double liability.

It will be observed that no power is given to one creditor to sue a stockholder and to recover an amount for his own individual benefit. The remedy must be for the benefit of all the creditors and there must be an ascertainment of the amount necessary to be paid, viz., so much of what is due on the shares of stock "as is necessary to satisfy the debts of the "company." It is necessary that the respective liabilities of the stockholders shall be determined and that there shall be an adjudging of "the amount payable by each."

We submit that the remedy prescribed by the statute is confined to one in which the requisite accounts and facts shall be taken and ascertained. There is provision for the entry of judgment in that proceeding alone. No provision is made for any subsequent proceedings in other and independent jurisdictions against stockholders not served in the original proceeding. There is to be one ascertainment of all the facts requisite to determine what must be paid by each stockholder. In that proceeding, and in that alone, judgment must be entered against the respective stockholders.

In addition to this, we submit that in the clearest possible language the Minnesota statutes have designated the only forum in which the remedy can be worked out, viz., "any "DISTRICT COURT which possesses jurisdiction to enforce "such liability." Under their terms, no other court has power to enforce the liability, saving a district court of Minnesota.

It is conceded by the appellant that no judgment can be entered in Minnesota against non-resident stockholders not

served. This being so, an independent proceeding upon his theory, is necessary, in a foreign jurisdiction. The right of such jurisdiction to enforce the liability is barred by the provision of the statute, limiting jurisdiction over the remedy to a district court of Minnesota.

III. Inasmuch as the appellees were not parties to the proceedings in Minnesota, they were not bound by the same.

It is not necessary for the purpose of sustaining this proposition, to determine whether or not the method prescribed by the Minnesota statutes for enforcing the double liability of stockholders was, or was not, exclusive.

It is conceded that, as a result of those proceedings, no decree was entered against the appellees. The assistance of the court of another jurisdiction was necessary and certain facts were required to be found, or held to have been properly found, before judgment could be entered in such other court against them. The question under this head, therefore, is whether or not, under the settled principles of jurisprudence, any court can enter a decree which requires it to assume as conclusive, certain facts which can only be found judicially. In other words, the appellees were only liable after certain facts had been judicially determined. Were they concluded, by a judicial determination of such facts, made in proceedings in which they were not parties?

No one pretends, so far as we can judge, in the absence of the appellant's brief, with which as yet we have not been favored, that the Minnesota statutes specially provided a remedy in any other courts than those of Minnesota.

In the '*obiter dictum*' in Hanson *vs.* Davison, it was only suggested that there was nothing in such statutes, which precluded a court in another jurisdiction from giving ancillary relief.

We submit, therefore, that the question, not one of interpretation of Minnesota statutes, but of general law, is whether a court can enter a decree against a defendant, not liable unless

certain facts, prerequisite to the liability, have been judicially ascertained, because such facts were found in another judicial proceeding, to which he was not a party?

The Circuit Court of Appeals of the Third Circuit was of the opinion that a decree could not be entered under such circumstances. The two Circuit Court judges of the First Circuit Court of Appeals were of a like opinion. Two of the district judges, sitting in the latter court, were of the contrary opinion.

The dissenting opinion of Judge Colt in Hale *vs.* Hardon, 95 Fed. Rep., 777, and that of Judge Putnam in 89 Fed. Rep., 283, have discussed the question with so much learning, power of reasoning and elaborateness, that nothing remains to be said in support of the negative view. We refer to those opinions as expressing, far better than we can, the views upon which we rely.

In the very elaborate opinion written by Judge Aldrich, an affirmative conclusion is reached, mainly because of the lack of any remedy against non-resident stockholders unless that view was taken. It is said by Judge Aldrich, with truth, that if the ancillary jurisdiction be not sustained, no effectual relief can be obtained against non-resident stockholders.

We submit, however, that the question is not whether a remedy ought to be given in enforcement of the statutory right, but whether such remedy has been given.

It is for the legislature, not for the judiciary, to provide adequate remedies for rights conferred by statute. It is necessary that defects, or insufficiencies, in legislation, should be corrected by the only body which can legislate.

If the only remedy for insufficient legislation, is the exercise of an ancillary jurisdiction which destroys the right of every defendant to have adjudicated, in a case in which he is a party, all facts necessary to judgment, it is far better that such exercise shall be denied.

The legislatures of many of the States have now devised an amply sufficient remedy for the statutory duties imposed upon stockholders. We understand that in Minnesota, a statute recently passed, deals adequately with the subject.

At the time of the enactment of the earlier Minnesota statutes of 1894, three ways were open to legislative prescription in enforcing the double liability of stockholders, viz., (1) the grant of a right to any creditor to proceed against any stockholder; (2) the grant of a right to creditors, in one proceeding, to determine the facts prerequisite to the double liability, and to enforce such right against parties thereto by judgment; and (3) the grant of a right to some person, directed to be appointed for the purpose, to have determined, in one jurisdiction, in a mode therein specified, all the facts prerequisite to the ascertainment of the specific liability of each stockholder and, thereafter, to proceed in any jurisdiction, for the enforcement of the liability thus ascertained.

We concede that it would be entirely within the constitutional power of a State to enact, in the case of corporations by it created, that stockholders should be subject to a double liability if, in some proceedings by it prescribed, resort thereto should be ascertained to be necessary. Any stockholder accepting the benefit of the incorporation, by becoming the owner of shares, would be bound to meet such double liability whenever it should be thus ascertained.

We contend, however, that if the statute does not prescribe an ascertainment of the liability in proceedings other than those against the stockholder himself, but directs that he shall be liable only when certain prerequisite facts have been ascertained, he has a right to have such facts determined, in accordance with the usual rules which govern the determination of liabilities.

Had the Minnesota Legislature provided remedy (1) directing that after a creditor had obtained judgment against a corporation, which he was unable to collect because of its insolvency, he might proceed against any stockholder to fix him with double liability, there would have been no difficulty in obtaining judgment in any jurisdiction against any stockholder, after judgment had been entered against the corporation. In such event, the only prerequisite to fixing the liability would have been the entering of judgment against the corporation. Such judgment, when obtained, would have

been conclusive, saving in cases of fraud. Some States, notably Kansas, did provide this remedy; but it was found to result in injustice, because it enabled a favored creditor to collect the whole of his debt, whilst another could collect nothing.

The State of Minnesota adopted remedy (2). It provided no special method of ascertaining, outside of proceedings against the stockholders, the facts prerequisite to a judgment against them for the double liability. In requiring the ascertainment of these facts, it made it their right to have the determination made in proceedings to which they were parties. It is impossible to read the Minnesota statute, without reaching the conclusion that a proceeding was contemplated in which every person interested would be heard.

It is an insufficient answer to say that the non-resident stockholder *may* appear in the Minnesota proceedings. He is not obliged to appear, and, in the present case, the proceedings terminated in what is called "a final decree," before he was aware they had been commenced. Whether he might or might not have appeared, if he had had notice, it is sufficient to say he did not appear and that he had no notice so to do.

It is not necessary for us, in sustaining the proposition we are discussing, to maintain that if a stockholder is made liable to pay a debt of a corporation in part or in whole, he is not bound conclusively, in the absence of fraud, by the ascertainment, as against the corporation itself, of the fact, and the amount, of the debt. We admit that under such circumstances he is bound. The debt for which he is liable is that of the corporation, and the corporation is conclusively bound as to the fact of the debt, when the same has been judicially determined, by proceedings against it.

In the present case, however, under the Minnesota statutes, facts other than those of the amount of the indebtedness of the corporation are to be judicially determined before judgment can be entered against a stockholder upon his double liability. An account must be taken of the property and debts due to and from the corporation. It must be determined that the latter is insolvent and that "it has no property or

"effects to satisfy" the creditors. The respective liabilities of the different stockholders must be ascertained. The court must compel each stockholder to pay so much of his double liability "as is necessary to satisfy the debts of the company." The respective liability of the stockholders and the amount payable by each must be ascertained. In the present proceeding, the corporation and the Receiver, together with some twenty resident shareholders, were made parties defendant. The corporation and the Receiver made default. The Receiver had no possible interest in the controversy. Whether the creditors did or did not succeed was immaterial to him. The amount which might be recovered would not be an asset which would pass to him. His duty was confined to an administration and distribution of other assets.

The purpose of the proceeding was not to recover judgment against the corporation. True, the liabilities of the corporation were to be ascertained, but that was merely for the purpose of ascertaining the amount of judgment to be entered against each stockholder. The prayer of the bill, as filed in Minnesota, was, not that judgment should be entered against the Northwestern Guaranty Loan Company, but that judgment should be entered against the stockholders for such liability of each as should be ascertained.

We submit that there is a difference in legal effect between a suit brought against a stockholder to compel the payment of a debt of a corporation, after such debt has been judicially fixed by judgment against the corporation, and a suit brought against the stockholder for the purpose of ascertaining the amount to be paid by him in liquidation of the corporate indebtedness. In the first case, the judgment against the corporation finally settles the question of its liability, not only as against itself, but as against every person interested therein. In the last case, the corporation is not interested to resist a decree, fixing the existence of the amount of indebtedness, where the sole purpose of such fixing is, to collect the amount thereof from third persons—*i. e.*, from stockholders subject to double liability.

As we have said, however, there was a judicial duty to de-

termine, not merely the amount of the indebtedness of the corporation, but the value of its assets; the amount of shares held by each stockholder and the amount necessary to be paid by each stockholder to satisfy the debts of the company.

The Receiver was not interested in the determination of the amount of the liabilities, or of the value of the assets, because the effect of the proceeding was not to interfere in any way with the assets which he possessed. Both corporation and Receiver might have been willing that excessive judgments should be entered against the stockholders. Be this as it may, in no event could either suffer from their entry. Each and every stockholder sought to be held liable, was vitally interested, not only in the determination of the indebtedness of the corporation, but in the correct ascertainment of the assets and of their value, and of the amount and *personnel* of the contributing shareholders.

In the present case, the indebtedness was alleged to be so far in excess of the assets and of the par value of the outstanding shares, that it seems probable no controversy made in the interest of the shareholders, would have resulted in reducing the indebtedness and in swelling the value of the assets to a sufficient extent to relieve from the double liability; but, the question as to the legal effect of proceedings like those in Minnesota cannot be made to depend upon the probabilities in any particular case, of a successful defense. A principle must be established which will govern all cases.

It is obvious that, in all, it will be the interest of the creditors to establish the largest possible deficiency and to secure a decree charging each holder with the largest possible amount within the statutory limitation. The plaintiffs, therefore, in all cases, will have an interest directly in opposition to that of the shareholders, but it may well be, in many cases, that there will be no parties defendant who will be able, or will be sufficiently interested, to make the best possible defense. Yet, every stockholder, whether served or not, the appellant contends, will be bound by the finding of the Minnesota court that each share must pay the designated sum. It is vitally important to him, therefore, not only that the indebted-

ness shall not be found to be greater than it is, but that all assets shall be disclosed, that these shall be fully and properly valued, that stockholders of financial ability shall not be allowed to escape and that the amount of issued shares, subject to contribution, shall be properly determined.

As we have said, none of these questions concern the corporation or the Receiver. As to all they are indifferent; as to some, their interests may be opposed to those of the stockholders.

By collusion, or for other reasons, the creditors may omit to serve a resident stockholder, who will thus be permitted to escape. For like reasons, they may make defendants those they will allege to be stockholders, who may be willing to be found legally liable, when not financially responsible, for the purpose of shielding real parties. Resident stockholders may secure findings that they are not holders, or that they have paid all due by them, in the absence of non-resident stockholders, who, if present, might furnish contradictory evidence.

As each stockholder is bound, if the appellant's theory be correct, by the result of the proceedings in Minnesota, it is his right to be confronted with the testimony, to cross-examine witnesses, to object to the admission of what is not competent and to make that defense which always results where the defendant has an interest in the result.

How was it possible for the Circuit Court of Pennsylvania to know whether, in the Minnesota proceeding, a genuine defense had been made and that everything pertinent to a proper decision had been offered? It appears (Record, page 42) that the Loan Company and its Receiver, and many of the stockholders served, made default. While it is said a few of these stockholders made answer, the answer itself does not appear. Whether the resident stockholders were or were not financially able to respond, and whether they did or did not make such defense as could, and would, have been made by parties really interested, does not appear; nor does it appear whether the resident stockholders did or did not have any interest, direct or indirect, making it not undesirable that a large deficiency should be established as against non-resident shareholders.

All that does appear is, that with, or without, an adequate defense being made by those served whose interests were several, not joint, a fact was established judicially which it is claimed is conclusive as against the appellees, without their having had an opportunity to take part in the litigation.

The appellant must contend that if the Minnesota proceedings finally determined the amount to be paid by each stockholder, such proceedings will be valid if conducted against the corporation and Receiver alone, without the joinder of any shareholders. Is it conceivable that a fact, prerequisite to the liability of a shareholder, can be found against the latter in proceedings in which the parties defendant will be not interested if the creditors include those only who have no interest therein and those who will in no way be affected adversely by the result?

If no shareholders are served, either through design, or for lack of ability to find them, the proceedings, as appellant, to be consistent, must contend, conclude them. Persons may be served under the assertion they are shareholders, who may prove they are not, thus leaving the shareholding body entirely unrepresented in the proceedings. Responsible parties may be named as shareholders, defendants, who may dispute the fact of their liability and who may establish its non-existence. In such event, though there will be defendants other than the corporation and its Receiver, such other defendants will not be interested in the amount with which each stockholder will be charged, but solely in the establishment of his own non-liability.

Under a statute, therefore, which contemplates a judicial determination of facts as against the shareholders, such facts may be established without any shareholder being made party. Is any court, under any principle of comity, compelled to enter its decree against a defendant, because some other court found against him a fact in proceedings where he was not made a party, in a case where his liability depended solely on such fact being judicially determined? The Minnesota statutes gave to every stockholder a right to a judicial determination of every fact necessary to be found in fixing the amount to be

paid by him. They devised no specific proceedings against parties other than himself during the course of which the fact of the amount should be ascertained. They gave him a right, which would have been denied had the Circuit Court of Pennsylvania held him bound, if a stockholder, to pay the amount per share decreed by the Minnesota proceedings.

As Judge Colt points out, the non-resident shareholders, under the appellant's theory, will be put in a much worse position than the resident shareholders, because they will be entitled to no contribution, if compelled to pay under a Pennsylvania decree. They will be unable to force the Minnesota Receiver to proceed against the Minnesota shareholders, under the Minnesota proceedings, by way of execution process. The indebtedness can be collected from Pennsylvania holders without Minnesota contribution, if the authorities in Minnesota shall feel disposed to favor the resident shareholders.

As the Minnesota statutes made, as a prerequisite to a stockholder's liability, a judicial ascertainment of the amount necessary to be paid by the holder of each share, there can be no valid judgment, compelling a shareholder to pay any amount, until he has been afforded an opportunity to be heard, not through a corporation or Receiver uninterested in the result, nor through some other stockholder who may not be interested, or may not be able to defend, but in person, through his own counsel.

The cases well reasoned, and well decided, which hold stockholders bound to pay unpaid installments though ordered to be assessed under proceedings in which they were not parties, have no bearing. Each stockholder of a corporation agrees with it that when by it demanded, unpaid installments will be liquidated. If the corporation becomes insolvent, its Receiver, under the order of the court, may do what would have been the duty of the corporation, viz., require the performance of the contract with the corporation. If the corporation itself demands such performance, it is no defense to aver it does not need the money. The contract is to pay when demanded. In case of insolvency, it is immaterial whether the whole amount of assessment is, or is not, requisite,

for payment of debts, inasmuch as the condition of payment is not the establishment of such indebtedness. In the present case, however, the contract of the stockholder is to pay only if it shall be judicially determined in judicial proceedings that a certain amount is necessary to be paid by each stockholder, because the indebtedness exceeds, in a designated sum, the assets correctly valued, and because there are only a specific number of stockholders liable to respond.

Nothing demonstrates the weakness of the appellant's contention better than the failure of those who have asserted it, to support it by sound reasoning.

In Hale *vs.* Hardon, 95 Fed. Rep., 757, Judge Aldrich has done everything possible in this respect; but, we venture to suggest, his argument does not carry with it conviction. He says:—

> "As said, we fail to discover any reasonable distinction "between the rule of conclusiveness, in respect to a judg- "ment for indebtedness against a going corporation "represented by directors, which is established by re- "peated authorities, and a judgment or decree against "an insolvent corporation represented by a general "Receiver, who is the *quasi* judicial successor of the cor- "poration and its interests, and whose duty it is, under "the power and authority of the court, to protect and "care for the corporate estate, and, as an incident thereto, "to resist unwarrantable claims against the corporation, "in the interest of all the creditors and all the stock- "holders. In the one case the stockholder is represented "by the officers of the corporation and in the other by "the general Receiver, who, under the authority and the "decree of the court, has become the lawful and con- "trolling successor of the corporation and its interests."

Is there no reasonable distinction between a judgment for indebtedness against a going corporation represented by directors, and a judgment or decree, not "against an insolv- "ent corporation represented by a general Receiver," but against stockholders in favor of creditors seeking to compel the former to pay to them, out of their individual assets, a sum of money? It is true that the general Receiver of the corporation is "the *quasi* judicial successor of the corpora-

"tion and its interests," but it has been expressly held in Minnesota that such Receiver has no interest in a fund owing, not by the corporation, but by its shareholders, to its creditors. There is no duty whatever upon the general Receiver "to protect and care for" the stockholders. "The "corporate estate does not include the stockholder's liability "to the creditors." The Minnesota proceeding is not a "claim against the corporation," warrantable "or unwarrant-"able." It is a claim against the stockholders in which neither corporation nor Receiver has any interest. It is no part of the duty of the "general Receiver," to defend. Upon what principle could he demand reimbursement out of the funds in his hands, of fees paid to his counsel for representing him in such a proceeding? The fund of which he is a Receiver would not be affected, favorably or unfavorably, by any possible result thereof.

We have made few citations during the course of this argument, believing the principles for which we contend to be elementary. We know of no decisions affecting them adversely. If citations be necessary they can be found in the cases to which we do refer, where every pertinent authority is cited by the learned judges who have decided them and who have exhaustively discussed everything involved in this appeal.

IV. An action cannot be maintained in the courts of one jurisdiction by a Receiver appointed in another jurisdiction merely to bring suit, not clothed with title to the *rem* in controversy.

In support of this contention we can make no better argument than that embodied in the decision by the Circuit Court of Appeals of the Second Circuit in Hilliker *vs.* Hale, 117 Fed. Rep., 220. It was there held that the appellant, who sued a New York stockholder, was not entitled to maintain his suit.

Judge Dallas in the Third Circuit in Wigton *vs.* Bosler, 102 Fed. Rep., 70, quoted approvingly what was said upon the subject in High on Receivers, sections 239, 241:—

"Upon the question of the territorial extent of a Re-
"ceiver's jurisdiction and powers, for the purpose of in-
"stituting actions connected with his receivership, the
"prevailing doctrine, established by the Supreme Court
"of the United States and sustained by the weight of
"authority in various States, is that the Receiver has no
"extra-territorial jurisdiction or power of official action,
"and cannot go into a foreign State or jurisdiction and
"there institute a suit for the recovery of demands due
"the person or estate subject to his receivership. His
"functions and powers, for the purposes of litigation, are
"held to be limited to the courts of the State within
"which he was appointed, and the principles of comity
"between nations and States, which recognize the judicial
"decisions of one tribunal as conclusive in another, do
"not apply to such a case, and will not warrant a Re-
"ceiver in bringing an action in a foreign court or juris-
"diction. * * * While, as is thus seen, the courts
"have generally denied the Receiver's extra-territorial
"right of action as a question of strict right, yet it has
"sometimes been recognized as a matter of comity.
"Thus, it has been held that Receivers of a foreign cor-
"poration, appointed in other States, might sue in New
"York in their official capacity, in cases where no detri-
"ment would result to citizens of the latter State; the
"privilege of thus suing being regarded as based rather
"upon courtesy than upon strict right and the courts
"declining to extend their comity so far as to work det-
"riment to citizens of their own State who have been in-
"duced to give credit to the foreign corporation."

It is not necessary for us to quote from the decision in Hale *vs.* Hardon, 95 Fed. Rep., 748, maintaining the opposite conclusion. The appellant will probably do that. In support of our contention, however, we appeal to the reasoning in the dissenting opinion of Circuit Judge Colt and in that of Judge Putnam in the Circuit Court. It is impossible for us to add anything thereto.

It does not necessarily follow that no Receiver may institute proceedings in a foreign jurisdiction. Where he is clothed with the title to a *rem*, by virtue of a statute or of an assignment, or of a decree, he may, in the way of maintaining and enforcing his title, do whatever is incident to ownership.

The case in which this court has dealt with the subject, in favor of the right of the Receiver, is one in which the Receiver succeeded to a dissolved corporation and to its property, taking by virtue of the statute the place of the dissolved corporation. Proceedings instituted by him for the purpose of recovering the rights with which he was vested, were maintainable in any jurisdiction, irrespective of the place of his appointment.

In the present case, the Receiver was clothed with no title. There was a right in creditors of an insolvent corporation to sue, upon a double liability, stockholders of that corporation. This right was vested in the creditors themselves. No statute vested it in any Receiver. They brought suit against certain stockholders who were served with process. They claimed, in addition to this, that other stockholders in other jurisdictions who could not be served, were liable to pay them certain amounts.

The court appointed a Receiver, not of an asset within, but beyond, its jurisdiction, viz., an indebtedness by citizens of other States. The Receiver thus appointed, is "authorized and em-"powered to take any and all necessary or appropriate steps "or proceedings against the non-resident stockholders of said "defendant, Northwestern Guaranty Loan Company, against "whom no personal judgment herein has been ordered for the "enforcement and realization upon their stockholders' liability, "and to that end said Receiver be and hereby is authorized, "directed and empowered to institute and prosecute all such "actions or proceedings in foreign jurisdictions as may be "necessary or appropriate to this end." It decreed that it would retain jurisdiction of the case "until the adjustment of "all and several the rights and liabilities of the respective "parties hereto."

This Receiver was also authorized, *quâ* parties against whom judgment was entered, resident shareholders, "to take any and "all appropriate or necessary steps or proceedings for the pur-"pose of collecting said judgments and all or any thereof, "and to hold the moneys and funds so collected subject to the "further order of this court in the premises." It was ordered

that "execution upon all or any of said judgments shall, upon "the application of said Receiver, be issued in the name of the "above-named plaintiff" (the creditor corporation), "and that "any and all funds thereon realized shall be paid to said Re- "ceiver, to be held by him and disbursed by order of this "court as hereinbefore provided."

A Receiver was therefore appointed to aid the court in collecting an amount of money, beyond its control, which could only be collected through the court of another jurisdiction. No title was vested in him. He was made the collecting agent of the court for the purpose of bringing into it a fund to be thereafter distributed by it. There was no contractual relation between the appellees and the Receiver. No statute made it the duty of the appellees to defend a suit by such Receiver.

We submit that no court has authority to raise a fund, thereafter to be distributed by it, where such fund can only be raised by proceedings in a foreign jurisdiction to be instituted by its Receiver. A court has power to collect within its own jurisdiction. So far as regards a fund within its control, it may appoint a Receiver thereof. Where, however, the fund can only be obtained by judicial proceedings elsewhere, it has no control over the same, and, *ex necessitate*, has no power to compel any other court to collect the same for it, under proceedings to be instituted by its Receiver.

We are dealing, not with the powers of Receivers specially constituted by statute to accomplish a certain purpose as against stockholders who shall become members of a corporation under its provisions, but with the rights of Receivers, as they exist generally under any comity heretofore recognized.

We deem it unnecessary to do more than to cite the decision of this court in Booth *vs.* Clark, 17 Howard, 322, 331, 332, 335, in which it said, what has never since been qualified:—

> "The Receiver is a representative of the court and may, "by its direction, take into his possession every kind of "property which may be taken in execution and also "that which is equitable, if of a nature to be reduced into

"possession. * * * He is an officer of the court. "His appointment is provisional. * * * It is the "court itself which has the care of the property in dis- "pute. The Receiver is but the creature of the court; "he has no powers except such as are conferred upon "him by the order of his appointment and the course "and practice of the court. * * * Indeed, whatever "may be the Receiver's rights under a creditor's bill, to "the possession of the property of the debtor in the "State of New York, or the permissions which may be "given to him to sue for such property, we understand "the decisions of that State as confining his action to the "State of New York. * * * Our industry has been "tasked unsuccessfully to find a case in which a Receiver "has been permitted to sue in a foreign jurisdiction for "the property of the debtor. So far as we can find, it "has not been allowed in an English tribunal; orders "have been given in the English Chancery for Receivers "to proceed to execute their functions in another juris- "diction, but we are not aware of its ever having been "permitted by the tribunals of the past. We think that "a Receiver has never been recognized by a foreign "tribunal as an actor in a suit."

The appellant, in the lower court, contended that what was said by this court, as above quoted, has become obsolete and that jurisdiction in the matter of powers of Receivers, has since been so extended, that a different rule now prevails. For this claim, we find no warrant in the decisions of this court. We are aware of no enlargement of ideas to such extent as compels one court, by its decree, to transfer a fund owing by some one within its jurisdiction, into the court of another jurisdiction, upon the order of the latter, thereafter to be dealt with by it. It is easier to talk about a march of principles than to prove such march by citations.

In Relfe *vs.* Rundle, 103 U. S., 225, this court, speaking through Mr. Chief Justice Waite, was careful to say that Relfe, the Receiver, was "not an officer of the Missouri State "Court, but the person designated by law to take the prop- "erty of any dissolved life insurance corporation of that "State, and hold and dispose of it in trust for the use and "benefit of creditors and other parties interested."

The effect of the Relfe case, which made no reference to Booth *vs.* Clark because it was not affected thereby, was carefully guarded by these words:—

> "The law which clothed him with this trust was, in "legal effect, part of the charter of the corporation. He "was the statutory successor of the corporation for the "purpose of winding up its affairs. As such he repre- "sents the corporation at all times and places in all mat- "ters connected with his trust. He is the trustee of an "express trust, with all the rights which properly belong "to such a position. He is an officer of the State, and "as such represents the State in its sovereignty while "performing its public duties connected with the wind- "ing up of the affairs of one of its insolvent and dissolved "corporations. His authority does not come from the "decree of the court, but from the statute. He appeared "in Louisiana, not by virtue of any appointment from the "court, but as the statutory successor of a corporation "which the court had in a legitimate way dissolved and "put out of existence. He was, in fact, the corporation "itself for all the purposes of winding up its affairs.
>
> "We are aware that, except by virtue of some stat- "utory authority, an administrator appointed in one State "cannot generally sue in another, and that a Receiver ap- "pointed by a State court has no extra-territorial power."

The Minnesota court, it will not be pretended, had jurisdiction over the fund, *i. e.*, the indebtedness owing by the Pennsylvania shareholders. If it had no jurisdiction over the fund, it had no power to appoint an officer to control the same. The Receiver was a parasite, with power to deal with nothing over which his creator had no control.

In conclusion, we meet the suggestion of Judge Aldrich that where there is a right, the court will give a remedy, with the assertion that where a right is conferred by statute, without a remedy being afforded, in a case where no such remedy is given by the general law, the right cannot be enforced.

The Legislature of Minnesota was bound to know its law was inadequate, in the way of providing a remedy against non-resident stockholders. It was its duty to confer such remedy.

It had no right to demand that courts of justice should legislate where it had failed.

In its *obiter dictum*, the Supreme Court of Minnesota did not say that the Statutes provided for the appointment of a Receiver with authority to collect in other jurisdictions. It said (Hanson *vs.* Davison, 76 N. W. Rep. 254, 256):—

> "Chapter 76, Gen. St. 1878, indicates and regulates to "some extent the remedy, leaving the court the duty of "making the remedy effectual by an application of the "principles of equitable procedure. This statute pre- "scribes the exclusive remedy only to the extent that an "equitable action of the character therein indicated must "be first instituted for the enforcement of the liability of "stockholders. * * * There is nothing in the statute "which justifies the conclusion that, if a stockholder's "liability is not enforced in the original action because "he is a non-resident, an ancillary action may not be "brought against him alone after the amount for which "stockholders are individually liable has been determined "in the original action."

It was upon the general principles of equity, that the judge who uttered this *obiter dictum* relied, for the right of a Receiver to transfer into the court of one jurisdiction, by suit in another, funds which were under the control of the latter.

In Glen *vs.* Marbury, 145 U. S., 511, this court held that a demand for stock assessment must be enforced, not by a Trustee, nor by the court, but by the person or corporation to whom the promise of the stockholder was made.

This court, speaking through Mr. Justice Gray, in Porter *vs.* Sabin, 149 U. S., 479, said:—

> "When a court exercising jurisdiction in equity ap- "points a Receiver of all the property of a corporation, "the court assumes the administration of the estate; the "possession of the Receiver is the possession of the "court; and the court itself holds and administers the "estate, through the Receiver as its officer, for the bene- "fit of those whom the court shall ultimately adjudge "shall be entitled to it."

In other words, when property is within the jurisdiction of the court it has a right, in a proper proceeding, to take possession of the same through its Receiver. Such possession is the possession of the court. The Receiver cannot receive anything which the court does not control. The purpose of his appointment is the conservation, collection and administration, of property in the court's possession or custody, or over which it has a right of possession or custody.

JOHN G. JOHNSON,
For Appellees.

No. 77.
Brf. of Chaplin as Amicus Cur

Office Supreme Court
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JAMES H. McKENNEY,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

Filed Oct. 25, 1902.

No. 77.

WILLIAM R. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY (A CORPORATION),

Petitioner,

vs.

EDWARD P. ALLISON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF

SUBMITTED, BY LEAVE OF COURT, BY

HEMAN W. CHAPLIN,

as *Amicus Curiae*,

IN SUPPORT OF PROPOSITIONS ADVERSE TO THOSE OF THE PRESENT PETITIONER.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 77.

WILLIAM E. HALE, AS RECEIVER FOR THE COLLECTION AND ENFORCEMENT OF THE LIABILITY OF STOCKHOLDERS OF THE NORTHWESTERN GUARANTY LOAN COMPANY, (A CORPORATION), PETITIONER

vs.

EDWARD P. ALLINSON, ET AL.

Brief Submitted, by leave of Court, by

HEMAN W. CHAPLIN,

as amicus curiæ.

STATEMENT.

NATURE OF THE PRESENT SUIT.

The question before this Court is the propriety of a decree of a Circuit Court (affirmed by a Circuit Court of Appeals,) sustaining the demurrers to a bill in equity, and dismissing the bill.

The bill seeks to enforce severally against a large number of defendants ever resident in Pennsylvania, and not served with process in the Minnesota suits which led up to this suit, a stockholder's liability alleged to exist by the Constitution and laws of Minnesota.

The bill alleges the creation of the corporation—The Northwestern Guaranty Loan Company—under the general laws of Minnesota, in 1884, for dealing in and guaranteeing notes, mortgages, etc.

The bill further alleges that by the Constitution and General Laws of Minnesota the stockholders of the Loan Company (so the petitioner states the effect of those laws) assumed a personal contractual superadded liability equal to the par value of their stockholdings (Record, p. 8, V.), and that this liability was for the "equal and common benefit" of the corporate creditors (Record, p. 8, V.). The provisions of the Minnesota Constitution and Statutes upon this subject were as follows :

Minnesota Constitution, Article X., Sec. 3, (as amended November 5, 1872) :

> "Each stockholder in any corporation (except those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him."

General Statutes of 1894, Chapter 76 :

> "Sec. 5905. Whenever any creditor of a corporation seeks to charge the directors, trustees or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his complaint for that purpose in any district court which possesses jurisdiction to enforce such liability.
>
> "Sec. 5906. The Court shall proceed thereon, as in other cases, and, when necessary, shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers.
>
> "Sec. 5907. If, on the coming in of the answer or upon the taking of any such account, it appears that such corporation is insolvent, and that it has no property or effects to satisfy such creditors, the court may proceed, without appointing any receiver, to ascertain the respective liabilities of

such directors and stockholders, and enforce the same by its judgment, as in other cases.

"SEC. 5908. Upon a final judgment in any such action to restrain a corporation or against directors or stockholders, the court shall cause a just and fair distribution of the property of such corporation and of the proceeds thereof, to be made among its creditors.

"SEC. 5909. In all cases in which the directors or other officers of a corporation, or the stockholders thereof, are made parties to an action in which a judgment is rendered, if the property of such corporation is insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the company.

"SEC. 5810. If the debts of the company remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers and of the stockholders, and to adjudge the amount payable by each, and enforce the judgment, as in other cases.

"SEC. 5911. Whenever any action is brought against any corporation, its directors or other superintending officers, or stockholders, according to the provisions of this chapter, the court, whenever it appears necessary or proper, may order notice to be published, in such a manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and, in default thereof, to be precluded from all benefit of the judgment which shall be rendered in such an action, and from any distribution which shall be made under such judgment."

The bill in the present suit also alleges three distinct judicial proceedings in Minnesota—to wit: (*a*) an insolvency proceeding, (*b*) a common law action, (*c*) a suit in equity,—and the appointment, in two of those proceedings, respectively, of two Receivers (or so-called Receivers)—The Minneapolis Trust Company, and the present petitioner.

The record of one of those proceedings (the equity suit) is set forth in the bill; the facts as to the other two proceedings appear by the recitals in the record of the equity suit.

THE MINNESOTA PROCEEDINGS.

The three judicial proceedings and the Receivership (or so-called Receivership) appointments were as follows :

(a) The Insolvency Suit.

May 20, 1893, the Loan Company was adjudged insolvent, and the Minneapolis Trust Company was appointed Receiver of the assets *of the corporation* (Record, p. 8). A stockholders' liability not being an asset of the corporation (Record, p. 8, V.), the stockholders' liability now contended for did not pass to the Minneapolis Trust Company as Insolvency Receiver.

(b) The Common Law Suit of Kimball (Rogers, assignee) vs. Northwestern Guaranty Loan Company.

The L. Kimball Printing Company, at some time prior to November 1, 1893, recovered judgment at law against the Northwestern Guaranty Loan Company for costs in the sum of $46 (the amount being material to be mentioned for identification of this judgment in the various records), and assigned the judgment to one Rogers. Execution was returned unsatisfied (Record, p. 23).

(c) The Equity Suit (Rogers vs. Minneapolis Trust Co., Receiver, et al.).

About November 1, 1893 (about five months after the adjudication of insolvency), Rogers, as judgment creditor under said common law judgment then owned by him, filed a creditor's bill (Record, p. 8), and subsequently an amended bill (Record, p. 20), in behalf of

himself and all other creditors,—naming as defendants the Minneapolis Trust Company (as Insolvency Receiver of the Northwestern Guaranty Loan Co.) and all the stockholders of the Northwestern Guaranty Loan Company,—to enforce the stockholders' liability, and, to that end, for an accounting of the debts and assets of the corporation. Process was served upon the defendants resident in Minnesota, to wit: The Guaranty Loan Company, the Minneapolis Trust Company (Insolvency Receiver), and *about twenty stockholders resident in Minnesota* (Record, p. 9, VII.; Record, p. 42), but upon no non-resident stockholders; nor did any of those non-residents ever appear or take part (Record, p. 50, middle).

The amended bill, and the interlocutory decrees (including the so-called "final" decree in that suit), divided the defendants into two classes, residents and non-residents, and dealt with those classes separately (Bill, Record, p. 33; Decrees, Record, pp. 42, 50, 54, 86). The bill (Record, p. 33) alleged that the Court had no jurisdiction to render a personal judgment against the non-residents, and did not pray (Record, p. 34) for such a judgment, and the interlocutory and so-called "final" decrees dealt with them on this theory (Record, pp. 50, 54, 86).

The resident stockholders were about twenty in number (Record, pp. 42, 50, 86), and will hereafter be characterized as the "twenty resident stockholders."

After the filing of the bill an order was made by the Court (in pursuance of Gen. Stat., Minn., ch. 76, sect. 5911, quoted above) requiring due publication of notice to all creditors of the Northwestern Guaranty Loan Co. to exhibit their claims against the said company, and become parties to the suit of Rogers vs. Minneapolis Trust Co., Receiver, *et al.*, in which suit said order was made. The order further prescribed the method by which said creditors should become parties, and provided that in default of so becoming parties to said suit, such creditors should be debarred from all benefits under any judgment which should be rendered therein,

and from all share in any distribution which should be made under such judgment (Record, p. 42, 11 lines from bottom).

Under this order notice was duly published, and "about eight hundred" creditors of the Northwestern Guaranty Loan Co. intervened and filed their complaints as required by said order (Record, p. 43).

There were two interlocutory decrees—one filed March 27, 1896 (Record, pp. 42–51), and one dated February 8, 1897 (Record, pp. 51–78)—and a so-called "final" decree, dated November 3, 1897 (Record, pp. 84–87)). The second interlocutory decree repeats in part the first, and the so-called "final" decree repeats parts of both the interlocutory decrees. These decrees were as follows:

The First Interlocutory Decree.

That decree, after declaring, as findings of fact, the organization of the corporation; the adjudication of its insolvency, and the appointment (in the insolvency proceedings) of the Minneapolis Trust Company as Insolvency Receiver; the standing of Rogers, the plaintiff, as a judgment creditor (by reason of his common-law judgment above specified), and other preliminary matters of fact, found also as "*Findings of Fact*":

> That notice had been given to creditors, and that "about eight hundred" creditors had intervened and presented their claims, and that the [principal of] the indebtedness was "about" $2,543,689.29 (Record, p. 50, middle), but that the *exact* amounts had not as yet been ascertained;
>
> That the exact value of the assets in the hands of the Minnesota Trust Company, as Insolvency Receiver, had not as yet been ascertained;
>
> That the amount of the capital stock at par was $1,250,000.

That the body of stockholders, and their respective holdings, were as set forth in a schedule annexed (Record, pp, 46–50),—in which were included the present defendants.

That none of the defendants in that suit except those named in the decree as having been served with a summons (*i. e.*, the Guaranty Loan Company, the Minneapolis Trust Company, as Insolvency Receiver, and certain about twenty Minnesota stockholder defendants), had "been served" or "appeared," or "taken part in any of these proceedings," and that they were non-residents * * * "and have continued to be so since the commencement of the action."

As "*Conclusions of Law*," the decree declared and adjudged:

That the said about twenty Minnesota stockholder defendants, "*over whom*" (to quote from the decree) "*this Court* has jurisdiction," were "liable to the extent of the par value" of their several holdings, as reduced by the value of the corporation's assets, when that value should be ultimately ascertained (Record, p. 50.)

That the suit be continued for the purposes (Record, p. 51, tenth line), (*a*) of determining the *precise* amounts of indebtedness of the corporation; (*b*) of determining the value of the assets in the hands of the Minnesota Trust Company as Insolvency Receiver (there being as yet no other receiver); (*c*) of determining "the exact liability" *of* "said defendant stockholders * * * *served* in this action" (*i. e.*, the twenty Minnesota stockholders), and (*d*) for "other and further relief."

That (Record, p. 51, 15th line) a Receiver in the suit (that is, Rogers vs. Minneapolis Trust Company, Receiver, *et al.*), should be appointed "upon five days notice to the parties appearing in this action,"—such "parties" including the about eight hundred creditors (Record, p. 50, middle.)

The decree did not deal with non-resident stockholder defendants, except in said declaration of fact that they had not been served with process or taken any part in the case.

Proceedings Between the First and the Second Interlocutory Decrees.

After the first, and prior to the second, interlocutory decree, there took place,—as appears by the recitals in the second interlocutory decree (Record, p. 51, last en lines),—certain proceedings, as follows :

> E. A. Montgomery was appointed Referee to inquire into and classify and report upon the several claims of the creditors. He performed his duty, and filed a report.
>
> Thereupon, the cause came on for further hearing January 15, 1897 (Record, p. 51, at end), upon " application by the * * * plaintiff," and the creditors " for a final decree adjudging the amounts said plaintiff and intervenors are respectively entitled to recover against said Northwestern Guaranty Loan Company, and ascertaining and fixing the amount of the liability of the several stockholder defendants, *within the jurisdiction of*" the Court (that is the twenty Minnesota stockholder defendants) " and for judgment against each thereof "—(that is each *Minnesota stockholder defendant*)—" for the amount so ascertained," and for " further relief."

The Second Interlocutory Decree.

Shortly thereafter (Feb. 8, 1897, Record, p. 54, at end), was made the second interlocutory decree (Record, pp. 51–78), with " *Findings of Fact*," substantially as follows :

> That the allegations in the complaints of the intervening creditors were just.

That the [principal of the] indebtedness of the corporation aggregated $2,543,689.29, according to a schedule annexed in the decree (Record p. 52, II.; p. 55 *et seq.*) [That the sum named represented principal only, appears from Record, p 85, "Fifth."]

That the assets held by the Insolvency Receiver, —there being as yet no other Receiver,—amounted to $440,000 (Record, p. 52, III.).

That the par amount of outstanding stock was $1,250,000. That there was therefore an excess of corporate debts over corporate assets, not only equal to, but exceeding by $853,689, the total par amount of stock (Record, p. 52, IV.).

The Court adjudged as "*Conclusions of Law*" (Record, p. 53), as follows:

That there was due to the then plaintiff Rogers from the corporation $46 and interest, being the amount of his said common-law judgment.

That there were due to the several creditors from the corporation, various sums in principal and interest, according to a schedule annexed to the decree (Record, p. 53, "Second"; Record, p. 55, *et seq.*)

That Rogers, the then plaintiff, and the other creditors, who had come in, should recover the amounts of the stockholders' superadded liability *from the twenty Minnesota stockholders*,—all named in the decree (Record, p. 53, "Third"),—such liability of said Minnesota stockholder defendants footing up $70,200 (Record, p. 53, unadded column).

That William E. Hale, (the present Petitioner), be appointed Receiver in that suit; and be "authorized, empowered and directed to take any and all appropriate or necessary steps or proceedings for the purpose of collecting said judgments, and all or any thereof, and to hold the moneys and

funds so collected, subject to the further order of this court in the premises" (Record, p. 53, "Fourth").

That said Receiver be "directed, authorized and empowered to take any and all necessary or appropriate steps or proceedings against the non-resident stockholders of said defendant Northwestern Guaranty Loan Company, *against whom no personal judgment herein has been ordered*, for the enforcement and realization upon their stockholders' liability, and to that end said Receiver be and hereby is authorized, directed and empowered to institute and prosecute all such actions or proceedings in foreign jurisdictions, as may be necessary or appropriate to this end" (Record, p. 54, "Eighth").

"That this court retain jurisdiction of this cause until adjustment of all and several the rights and liabilities of the respective parties hereto" (Record, p. 54, "Ninth").

It is to be noted that this decree expressly denies, in the words italicized above, any attempt to render a judgment personally binding on the non-resident stockholders.

No non-resident stockholder defendant had up to that point been served with process, and none had appeared or taken part in the proceedings; nor did any such non-resident stockholder appear or take part up to the time of the so-called final decree.

The Third Decree (so-called "Final" Decree), dated November 3, 1897 (Record p. 84).

This decree merely followed and adjudged, with only slight differences in the arrangement or the language, the findings and conclusions of law of the first and second interlocutory decrees above set forth, and added nothing, either in legal effect or in language, to what was in those two prior decrees. Reference is

therefore here made to the detailed statements above, of the two interlocutory decrees (particularly of the second interlocutory decree), for a statement of the substance and legal effect of the so-called final decree.

It may be added that in the so-called final decree, it was ordered, "that this court retain jurisdiction of this cause until adjustment of all and several the rights and liabilities of the respective hereto" (Record, p. 87, "Fifteenth").

PROCEEDINGS IN THE PRESENT SUIT.

In the equity suit now before this Court, said William E. Hale, relying upon his appointment in the said Rogers equity suit in Minnesota as Receiver for the collection and enforcement of the liability of foreign stockholders, filed (with Rogers as joint plaintiff, who was subsequently withdrawn) a bill against a large number of Pennsylvania defendants, alleged to be stockholders, but not alleged to have been served with process in Minnesota. The several defendants demurred upon the grounds, among others, *(a)* that, inasmuch as they had not been served with process in the Rogers equity suit in Minnesota, the proceedings in that suit were in no way binding upon them, and there was, therefore, a fatal lack of parties in the present suit, to wit, of the National Guaranty Loan Company and the Minneapolis Trust Co. (insolvency Receiver), and all other stockholders and all creditors; *(b)* that the plaintiff had no standing in the Court or in any Court except the Courts of Minnesota; *(c)* that the remedy, if any, was at law, and *(d)* that the proceedings in Minnesota had no legal validity against these defendants, (as they were not served with process), and therefore could not be enforced against them in any form of proceeding. The Circuit Court sustained the demurrers and dismissed the bill without prejudice, resting its decision upon the ground that the remedy, if any, was at law; and the decree was "that the demurrer be sustained."

The Circuit Court of Appeals affirmed this decree, inclining to the opinion that the bills should have been dismissed for lack of standing of the Receiver, but adopting the said view of the Circuit Court.

ARGUMENT.

SCHEME OF ARGUMENT.

The bill will be discussed with reference to the merits, and separately with reference to the question of the standing of the petitioner as plaintiff in the Circuit Court, and certain miscellaneous questions of jurisdiction, etc.

Before entering upon the discussion of the merits, it will be convenient briefly to point out the different ways in which the plaintiff might have sought to contend for liability on the part of these defendants; then to point out the ground or grounds upon which he in fact in his bill endeavors to support that liability; and then to discuss the merits from the standpoint of the one or more grounds upon which the bill in fact endeavors to support liability.

It would have been competent to the plaintiff in his bill,—had he chosen so to plead,—to stand upon either one (and perhaps by alternative pleading, upon two or all) of three contentions, to wit:

(a) Upon the contention that, in the present case, without relying upon any adjudication whatever in Minnesota (except the mere common law judgment of L. Kimball & Co., assigned to Rogers, and under which Rogers was made a judgment creditor of the corporation, or the mere order appointing the plaintiff a so-called "Receiver"), he could set up and establish, in the Circuit Court below, every fact essential to liability,

including insolvency of the corporation, amount of its indebtedness, names and amounts of creditors, and so forth.

(b) Upon the contention,—going to the other extreme,—that everything material to this case had been established in Minnesota, including the fact of stockholding, and the proposition of legal liability on the part of the several defendants below, by a decree or decrees binding even upon non-resident stockholders.

(c) Upon the contention,—which would be a middle ground,—that certain facts relating to the merits, that is, the fact of insolvency of the corporation, the amount of its indebtedness, the claims of the several creditors, the net amount of assets of the corporation and the amount of shortage of assets, *et cetera*, had been established in Minnesota by a decree or decrees binding upon non-resident stockholders; leaving, however, the fact of the amount of stockholding on their part, and the proposition of liability on their part, not adjudicated upon in Minnesota in a manner binding upon them, but open to establishment as against Pennsylvania defendants in the Circuit Court below.

The first of these three possible schemes of action, the bill evidently does not set up. It is not entirely clear that the bill does not attempt to set up the second of those possible schemes of action. It is plain that the bill does attempt to set up (either as the sole, or as an alternative ground of action) the third of of these possible schemes of action.

This brief will, therefore, in dealing with the merits, deal with the bill on the theory that it sets up either one or both of the second and third of these possible schemes of action, but not the first.

The argument will, therefore, be presented under four principal heads, as follows:

I. The merits of the suit in its aspect of a mere action upon a foreign judgment personally binding upon the

present defendants and determining their liability, and leaving open here nothing but the question of valid existence of the foreign judgment in the foreign forum.

II. The merits of the suit in its aspect of a suit resting upon a binding adjudication (or binding adjudications) in Minnesota, of insolvency of the corporation, indebtedness of the corporation, claims of the several creditors, amount of assets and shortage of assets; but leaving open, as a question not adjudicated upon in Minnesota, in a manner binding upon these defendants, the fact and the amount of stockholding on their part and the proposition of liability on their part.

III. The question of the standing of the plaintiff in the Circuit Court below, on these two aspects of the bill, respectively.

IV. Various miscellaneous questions relating to jurisdiction and other matters, pertinent to both of the above-mentioned possible aspects of the bill.

This division of the argument is, perhaps, not in the strictest sense a logical division, inasmuch as some of the considerations to be presented are pertinent not only to one, but to both, of the two possible aspects of the bill; but it is thought to be the most convenient and practical division, with a view to simplicity and clearness and to the avoidance of repetition.

I.

THE MERITS OF THE SUIT IN ITS ASPECT AS A MERE ACTION UPON A FOREIGN JUDGMENT PERSONALLY BINDING UPON THE PRESENT DEFENDANTS, AND ESTABLISHING AND FIXING THEIR PERSONAL LIABILITY.

Under this head there will be presented the following contentions:

A. Such power as a State has to summon in or deal with nonresident stockholders, so as to render binding personal judgments against them, is dormant until called into life by a State statute.

B. There is no statute in Minnesota effectually providing for, or undertaking to provide for, substituted service upon nonresidents.

C. There is a statute in Minnesota expressly denying the jurisdiction of the State Courts over persons in the position of the present defendants.

D. Even if the statute law of Minnesota were otherwise, no service was asked for, ordered or made against the present defendants, in or by the Minnesota courts, in the case of Rogers vs. Minneapolis Trust Company, Receiver, et als. (the suit in which, if at all, the personal liability of the nonresident stockholders was dealt with).

E. Service upon the Northwestern Guaranty Loan Company, as a corporation, in either of the above-mentioned Minnesota suits, was not such service as would bind the present defendants, on the question of their personal liability.

A. Such power as a State has to summon in or deal with non-resident stockholders, so as to render binding personal judgments against them, is dormant until called into life by a State statute.

This proposition has ordinarily come into question in cases where a state has undertaken to exercise the power of excluding a non-resident from rights in property lying within the state. In respect of such cases, the necessity of a statute is well established.

Arndt vs. Griggs, 134 U. S., 316.
Hart vs. Sansom, 110 U. S., 151.

It would seem to follow *a fortiori* that a statute is necessary to support a personal money decree against a non-resident not served with process.

B. No Statute in Minnesota effectually providing for (or undertaking to provide for) substituted service upon non-residents.

Such a provision would be found, if at all, in those portions of the Constitution or those statutes which deal either with the matters of stockholders or of superadded liability (Constitution of Minnesota, General Statutes, 1878, Chap. 76, Sections 16–22; General Statutes, 1894, Secs. 5904–5911); or in the general statutory provisions as to procedure against non-resident defendants. Those statutes contain no such provision.

But we need not rest upon our own examination of the statute books; for the Minnesota Courts recognize the fact that there is no such statute.

In

Commercial Bank of St. Paul vs. Azotine Co. *et al.*, 66 Minn. 413 (1896),

it was held that findings as to the amount of stock held by non-resident stockholders not having property in, or served with process within, the State, *or any determination as to their liability*, would have been useless, as no one would have been bound by such findings.

In

Harper vs. Carroll, 66 Minn., 487 (1896),

it was assumed (p. 507) that the judgment of the Court could not bind non-resident stockholders upon whom service within the State could not be had.

In

Clarke vs. Cold Spring Opera House Co., 58 Minn., 16 (1894),

it was assumed that no judgment rendered in the suit could bind those stockholders not within the jurisdiction of the Court,—inability to reach by process being there viewed as an excuse for not bringing all the stockholders into the suit.

The decree in the case of

First Nat. Bank of Winona vs. Winona Plow Co., 58 Minn. 167 (1894)

was only for a "judgment against stockholders of whom or whose property *the Court has jurisdiction.*"

For other cases where it appears to have been assumed that non-resident stockholders are not bound, see

Mohr vs. Minn. Elevator Co., 40 Minn., 343 (1889).
Arthur vs. Willius, 44 Minn., 409 (1890).
Densmore vs. Shepard, 46 Minn., 51 (1891).
Frost vs. St. Paul Banking and Investment Co., 57 Minn., 325 (1894).
Nat. German American Bank vs. Tafley, 57 N. W. Rep., 1065, 1897).
Minneapolis Base Ball Co., vs. City Bank, 66 Minn., at p. 443.
Johnson vs. Fiscer, 30 Minn., at p. 176.

Indeed, this theory of the absence of any such statute in Minnesota, prevades not merely the Minnesota reported cases, but the whole record of the very suit relied on by the present petitioner, Rogers vs. Minneapolis Trust Company, Receiver, *et al.*, from the bill to the latest decree.

The amended complaint (Record, p. 20, *et seq.*) alleged the *names* and the *individual holdings* of all alleged stockholders (Record, pp. 25-32), and disclosed that most of them were non-residents ; and *expressly stated* (Record, p. 33, VI.), *that all but* about twenty certain defendants, specifically named, were non-residents " and have no property of any kind subject to levy on execution within this state," and *expressly disavowed the plan of asking the Court to take jurisdiction of them*, by adding (Record, p. 33, VI., middle of page), " *and the plaintiff has no means of getting jurisdiction over them in this action.*" This was emphasized by the prayers (Record, p. 33, VI.), under which the plaintiff prayed for relief against such defendants as " *shall become parties to this action*," and then prayed (Record, p. 34, " Second "), that the Minneapolis Loan and Trust Company (the Receiver in the insolvency suit), or some other person be appointed Receiver in the Rogers suit, *with power and authority to proceed against nonresident stockholders.*

This view is followed throughout by the Court, in all its order and decrees :

(1) The summons ran (Record, p. 17, 6th line) in the ordinary form for service within the State.

(2) By treating in all the decrees all the *twenty certain Minnesota defendants* as a class by themselves, and *specifically adjudicating stockholding and liability of them as of a class by themselves* (Record, p. 50, "As Conclusions of Law ; " Record, p. 53, middle ; Record, p. 55 ; Record, p. 86, " Ninth ").

(3) By stating in the decree (Record, p. 50), " none of the defendants named in the title of this case, ex-

cept those heretofore named as served with the summons in this action [that is, said about twenty certain Minnesota defendants] have been served, nor have they appeared or taken part in any of these proceedings. They are are all non-residents of this state and have continued to be since the commencement of this action."

(4) By the recital in the decree of February 8, 1897 (Record, p. 54, Eighth), of *lack of any personal judgment* against *non-residents*, and by the express statement that the plaintiff was appointed Receiver to take steps against "the non-resident stockholders of said defendants Northwestern Guaranty Loan Company, *against whom no personal judgment herein has been ordered* for the enforcement and realization upon their stockholder's liability," and to that end to bring suits in foreign jurisdictions.

That this latter quotation applies to all non-resident stockholders conspicuously appears from the whole record; throughout the record, from the amended bill to the last decree, about twenty certain Minnesota stockholders were treated as one class, with *personal judgments against them*, and the whole body of non-resident alleged stockholders were treated as another class, with express statement of lack of service upon them, and no profession of an attempt to pass any judgment binding upon them.

C. A statute in Minnesota expressly denying the jurisdiction of the State Courts over persons in the position of the present defendants.

The proposition that Minnesota does not attempt to reach non-residents is a matter of express statute in that State.

G. S. 1894 of Minn., Section 5201, provides that "no natural person is subject to the jurisdiction of a court

of this State unless he appears in the court or is found within the State, or is served with process therein, or is a resident thereof, or has property therein upon which the plaintiff has acquired a lien by attachment or garnishment, and then only to the extent of such property, except in cases where it is otherwise expressly provided by Statute."

[G. S. 1866, C, 66, Sect. 55; G. S. 1878, C. 66, Sect. 70.]

See, also, G. S. 1894, Sect. 5204.

D. Even if Minnesota statute law were otherwise, nevertheless, no service asked for, ordered or made, against the present defendants, in or by the Minnesota Court, in Rogers vs. Minneapolis Trust Co., Receiver, et als.

This clearly appears from the analysis presented immediately above, of the bill and decrees in that suit.

E. Service upon the Northwestern Guaranty Loan Co., as a corporation, in either of the above mentioned Minnesota suits, was not such service as would bind the present defendants on the question of their personal liability.

It may be conceded that, under the familiar principles of law, service upon a defendant corporation is sufficient to bind all the stockholders, in all ordinary suits against corporations. This rule is dictated by convenience and practical necessity, in all cases where the corporation adequately represents the stockholders, that is to say, when the interests of the corporation as such, and of the stockholders personally, are identical.

It is substantially the same rule by which in many cases suit with reference to trust property may be brought against a trustee, without joining the *cestui que trust* as a party. It follows that where, in an ordinary suit against a corporation, service was properly made upon the corporation and judgment regularly entered against it, the validity of such judgment against the corporation cannot be subsequently attacked on the ground that process was not served upon the stockholders personally. But in order to maintain the present suit in the aspect now under consideration—namely, its aspect as a suit upon a judgment fixing the personal liability of the present defendants—the plaintiff must prove not only a judgment against the corporation, as to corporate assets and liability, and binding upon the present defendants as to those matters, but also a judgment against the present defendants personally, dealing specifically with and establishing their personal liability. As will be presently shown, the superadded liability of stockholders under the Minnesota Statutes is not an asset of the corporation, but a contractual liability to the creditors. The corporation, as such, in no sense adequately represents the stockholders in a controversy regarding such superadded liability; it either has no interest in such controversy, or an interest hostile to that of the individual stockholders. The circumstances determining the individual liability of any particular alleged stockholder are to a large extent personal to him. The questions whether he is a stockholder, when he became such, how much stock he holds, and what, if any, personal defenses he may have, are different questions in the case of each alleged stockholder, and questions on which such alleged stockholder is entitled to be heard. There is no general rule of law and no statutory provision or corporation by-law in the present case, by which service upon the corporation is made such service as will bind the stockholders, as regards the individual liability in question.

This proposition is sufficiently established by the following cases:

Hancock Nat. Bank vs. Farnum, 176 U. S., 640, 643.
Whitman vs. Oxford Nat. Bank, 176 U. S. 559, 563.
Wigton vs. Bosler, 102 Fed., 70.
Ekhart Nat. Bank vs. Northwestern Guaranty Loan Co., 30 C. C. A., 632; 87 Fed. 252.

This subject may be concluded by referring once more to the many places in the record of this case where it is admitted that no judgment binding the present defendants personally has been obtained.

It thus appears that the Minnesota courts—whatever *power* may have resided in the State of Minnesota, or in its courts—*has never in fact* undertaken to pass a judgment or decree *as against the nonresident stockholders*, adjudging against them the fact and the amount of their stockholding, or the existence or amount of a personal liability on their part.

It follows that the present suit cannot be maintained as a mere suit upon a judgment, personally binding upon the present defendants and determining their personal liability.

II.

THE MERITS OF THE SUIT IN ITS ASPECT OF A SUIT RESTING UPON A BINDING ADJUDICATION (OR BINDING ADJUDICATIONS) IN MINNESOTA, OF INSOLVENCY OF THE CORPORATION, INDEBTEDNESS OF THE CORPORATION, CLAIMS OF THE SEVERAL CREDITORS, AMOUNT OF ASSETS AND SHORTAGE OF ASSETS, BUT LEAVING OPEN, AS A QUESTION NOT ADJUDICATED UPON IN MINNESOTA, IN A MANNER BINDING UPON THESE DEFENDANTS, THE FACT AND THE AMOUNT OF STOCKHOLDING ON THEIR PART AND THE PROPOSITION OF LIABILITY ON THEIR PART.

Although under the last preceding heading there has been discussed at length the merits of the suit in its possible aspect as an action upon a foreign judgment, that aspect of the suit will probably not be relied upon by the present petitioner, in the argument, but he will probably rely upon the aspect of the suit stated in the present heading. That this is so appears from the general language of the bill and from the evident weakness of the bill upon the first possible aspect of it, and also from the fact that this is substantially the view taken of the plaintiff's rights and of his possible contentions by the highest Court which has as yet made a determination in his favor (Hale vs. Hardon, 95 Fed., 747); and from the explicit language of the bill in paragraph XV. (Record, p. 13).

Under the present head of this brief, therefore, we are probably dealing with the plaintiff's real contention.

Under this head the following contentions will be presented:

A. Upon general principles of jurisprudence binding everywhere—in the absence of a statute of competent jurisdiction to the contrary—all the questions, preliminary and final, involved in such a stockholders' liability as is now in question, including the question of the liability of stockholders, resident and non-resident, must be dealt with in a single omnibus proceeding in a single forum (or a group of affiliated proceedings working in express co-operation, and all in the same forum, and so constituting in substance a single omnibus proceeding), and that forum is the home forum of the corporation.

B. No jurisdiction except the home jurisdiction can, by legislation annul or modify such rule in respect of its operation upon corporations of such jurisdiction.

C. The State of Minnesota has never annulled or modified this rule of general jurisprudence.

D. Regardless of the existence and binding force of such general principle of jurisdiction (existing apart from competent modifying statute), it is competent to the home jurisdiction of a corporation, in dealing with stockholders' liability, to recognize or affirm, or, if and in so far as it might deem proper, to enlarge or to create a requirement of such omnibus proceeding in its own tribunals.

E. The State of Minnesota has, by statute, affirmed, and,—if the rule otherwise would not have been fully operative,—has enlarged the general rule to the full breadth of it, as it is stated above under sub-heading A, and that rule, as so stated, is therefore a binding rule of Minnesota law, and is upon that ground, if upon no other, binding everywhere. In its legislation the State of Minnesota has elected not to undertake to deal with stockholders who are not resident and cannot be

served (or their property reached), within the State; but its requirement of an omnibus proceeding in Minnesota is none the less absolute and exclusive.

F. This legislation of Minnesota is fatal to the present bill, not only upon the grounds and from the point of view stated in the last preceding sub-headings, but also, and apart from the fact that the procedure which it requires is an omnibus procedure—from the point of view that any specific form of procedure fixed, in respect of such a liability, by the jurisdiction which creates the liability, is an exclusive form of procedure which goes out of the forum as well as in it; and the procedure now attempted must, therefore, fail on the ground, not merely that it is not an omnibus proceeding in Minnesota or elsewhere, but that it is an attempt to depart from a form of procedure prescribed by the laws of Minnesota.

G. Even if the liability of these defendant stockholders could be established in a non-omnibus proceeding like the present, after the questions of the assets and indebtedness of the corporation had been adjudicated in a general suit, there has in the present case been no complete and binding adjudication of those questions.

H. It is a general rule of jurisprudence binding everywhere, in the absence of a statute to the contrary of a competent jurisdiction, that an ancillary suit must be brought in the same forum and in the same courts as the principal suit. The present suit is, within the meaning of this rule, ancillary to the suit of Rogers vs. Minneapolis Trust Company, Receiver et al. in Hennepin County District Court, Minnesota, and that Court in that county has, therefore, exclusive jurisdiction of this suit.

It is no objection to the enforcement of the foregoing principles, in a given instance, that the jurisdiction in which alone under those principles (as they stand in a given instance) relief can be had, is not

competent to enforce that relief, whether its lack of competence so to do arises *(a)* from difficulties not capable of being surmounted, or *(b)* from deliberate failure, on the part of such jurisdiction, to utilize sufficiently its constitutional powers against non-resident stockholders of its corporations.

A. Upon general principles of jurisprudence binding everywhere,—in the absence of a statute of competent jurisdiction to the contrary,—all the questions, preliminary and final, involved in such a stockholders' liability as is now in question, including the quesion of the liability of stockholders, resident and non-resident, must be dealt with in a single omnibus proceeding in a single forum (or a group of affiliated proceedings working in express cooperation, and all in the same forum, and so constituting in substance a single omnibus proceeding), and that forum is the home forum of the corporation.

This is not a matter of local law, but of universal law resting upon fundamental principles.

The general principles of equity jurisprudence forbid the entertaining of a suit where the limits of the jurisdiction of the Court, or other circumstances, are such, that on the one hand no complete adjustment of all rights in question can be effected and on the other hand no decree can be given which may not materially affect the absent parties; and this rule is, in this country, viewed as *jurisdictional*, as between different Federal courts; between different State courts, and between Federal courts and State courts. In other words, it is a familiar rule that where persons not

joined are necessary parties, and their joinder would oust the jurisdiction based on diversity of citizenship, the Federal courts will not take jurisdiction.

And when such necessary parties are not capable of being reached with process, the Federal courts issue a final decree, only if all interests are adequately represented, or a decree can be given which will affect only the parties before the court. If it appears in advance that no final decree can be given, of course jurisdiction will not be taken.

Shields vs. Barrow, 17 How., 130.
Williams vs. Bankhead, 19 Wall., 563.
McArthur vs. Scott, 113 U. S., 340.

The rule is so broad, and is so thoroughly a rule of reason, fitness, and principle, that it operates to protect from injury even claims which would only *indirectly*, not in any *binding* manner, be effected by the decree.

Among the matters which, it is held, should be dealt with in a manner which must result in unity and harmony of determination, are the creation and the gradual shrinking of final extinction of corporate life membership in the corporation (and thus title to stock, where membership goes by stock); title to office; the keeper, the keeping and the keeping-place of the records; the places for meetings; the adjustment of conflicting rights of members; the validity of meetings and of votes.

Wilkins vs. Thorne, 60 Md., 253 (1883).
North State Copper, etc., Co. vs. Field, 64 Md., 152 (1885).
State vs. Curtis, 35 Conn., 374.
Society for the Propagation of the Gospel vs. New Haven, 8 Wheaton, 464, 483, 484.
Republican Mountain Silver Mines vs. Brown, 58 Fed. Rep., 644, 648.
Importing Co. vs. Locke, 50 Ala., 332, 335.
Dodge vs. Pyrolusite, etc., Co., 69 Ga., 665.
Halsey vs. McLean, 12 Al.. 438.
Smith vs. Mut. L. Ins. Co., 14 Al., 336.
Kansas Co. vs. Topeka Co., 135 Mass., 34.

Bank of North America vs. Rindge, 154 Mass., 203.
Higgins vs. Central New England, etc., R. R., 155 Mass., 176.
New Haven Horse Nail Co. vs. Linden Spring Co., 142 Mass., 349.
Post & Co. vs. Toledo, etc.. R. R., 144 Mass., 341.
Pierce vs. Equitable Life Assur. Soc., 145 Mass., 56, 63.
Erickson vs. Nesmith, 15 Gray, 221 ; 4 Al., 233.
Erickson vs. Nesmith, 46 N. H., 371.
Rice vs. Hosiery Co., 56 N. H., 114.

These principles apply, not only to *judicial*, but to *legislative*, action.

Canada Southern Ry. Co. vs. Gebhard, 109 U. S., 527.
See, also, Republican Silver Mines vs. Brown, 58 Fed. Rep., 644, 648.

Some of the cases above cited rest the requirement of exclusiveness in some one forum (which they all specify as the home forum), upon the *rights of soverignty* of the home State, in matters relating to corporations of its own creation. But they also give other reasons, which require exclusiveness in some one forum—reasons, of a *practical* nature. Many such reasons readily suggest themselves. If, for example, questions of this character were not limited to some one proceeding (or group of co-operative proceedings in some one forum) having power to decide them *once and for all*, there might be, in a given corporation, two sets diffrent of members, each with title to office, under the decision of some tribunal, conflicting meetings, conflicting quorums, conflicting boards of directors, conflicting presidents, treasurers or cashiers, conflicting records, or certified copies of records ; an assessment upon *some*, but not upon *all*, under a statute requiring assessment upon *all* if upon *any*. Some might be adjudicated to have paid their subscriptions to stock, and others not, although all might have done the same specific act.

The principles of law above stated have been recognized with great breadth in Minnesota and in cases of the same kind as the present.

In

In re Martin's Estate, 56 Minn., 420,

it was held that "no action or proceeding can furnish complete remedy or protect the rights of all persons interested except one which brings in all interested parties, the corporation, all the stockholders, and all the creditors."

And to the same effect, see

Minneapolis Base Ball Co. vs. City Bank, 66 Minn., p. 443.

Johnson vs. Fischer, 30 Minn., p. 176.

Pertinency of these Principles to a Case Like the Present.

Under these principles, the two separate and distinct resources of a corporation's creditors *(a)*, the assets of the *corporation itself*, and *(b)* the *assets of the creditors, in the form of stockholders' superadded liability*, although distinct from each other, *should*, nevertheless, be utilized and enforced harmoniously, either by a single judicial proceeding, or by different judicial proceedings working harmoniously and with such mutual interplay as to produce in the end a just and harmonious result. The result of such proceeding or proceedings taken as a whole *ought*, for example, to include, among other things, the following particulars:

There should be a *single roster of adjudicated stockholders*, and a *single table of the holdings of the several shares of stock*. Otherwise (for example), in a case requiring only a *partial* assessment, one might in the end be assessed seventy per cent. of his maximum liability, on the theory that the total stock issue was at one figure and another only thirty per cent. on the theory that the total stock issue was at a much larger figure; or, two different men might, in different tribunals or different suits, both be held as holders of certain disputed shares of stock; and many other similar irregularities might easily result.

There should be a single adjudication of the *times* of ownership of stock by the several stockholders; for otherwise two successive holders of certain share might *both* be held, or the wrong one might be held, or both might go free.

There should be a single determination of the dates of the incurring of the corporate liabilities to the several creditors, where that fact is material. (In the present case, prior to May 2, 1892, all contract liabilities above $50,000 in all were *ultra vires* and carried with them no stockholders' liability unless,—possibly a liability to refund values actually enjoyed by the corporation—an element not pleaded in this case).

There should be a single determination of the *character* of the indebtedness, whether contract or tort, secured or unsecured. The pertinency of these questions is fully brought out under a later head of this brief (IV., B, *infra*).

There should in a case standing like the present, be a *single* determination of the amount of capital stock *paid up*, the maximum indebtedness of a Minnesota corporation being limited, in one direction, by that amount, and any unpaid instalments being an asset of the corporation which would relieve the stockholders *pro tanto*.

When such principal facts are ascertained by a single tribunal, or a group, co-operative proceeding, all in courts having jurisdiction of all parties, then the enforcement in other tribunals of the *mere* pecuniary liability of a given individual *thus ascertained*, would be nothing but an action upon a judgment at law or in equity, as the case may be. But it is essential that there be required a *single proceeding*, extending to all the questions above enumerated, in order to reach a good, harmonious and practical result through unity.

The necessity that all questions of the personal liability of stockholders be adjudicated in the omnibus proceeding and be not left to subsequent distinct suits, appears from the fact that any personal defense

on the merits, successfully maintained by one alleged stockholder, will increase the proportion in which all the others are liable. It is necessary, therefore, that the *facts* as to each alleged stockholder individually be first ascertained, and judgment then given against each one found to be liable, in accordance with what has thus been established as to the rest. This can be done only in one omnibus proceeding or series of affiliated proceedings in one jurisdiction.

These principles have been applied in a great variety of ways, and in particular in support of the requirement of exclusive power of the home forum to deal with corporation matters, which, to avoid confusion, conflict and injustice—one might say, legal anarchy—from arising under our complex system of government, should be dealt with like the probate of a will, once and for all, in one proceeding.

Thus far, there have been presented considerations, most of which would be satisfied by a single proceeding or a group of expressly affiliated proceedings in *some one forum*, not necessarily in the home forum of the corporation. But it is evident that if this be sound, the omnibus proceeding must be exclusively in the *home* forum. For the cases cited above, in so far as they rest the requirement of singleness of procedure upon *sovereignty*, of course call for exclusiveness in the *home* forum; but in so far as they rest it upon *fitness and propriety*, they lead to the same result; for if there must be exclusiveness somewhere, that exclusiveness must, of course, be in the home State. That State, certainly, could not be excluded. Again, aside from the *right of the State* to exclusive jurisdiction over certain affairs of its own corporations, the questions above enumerated depend largely upon the construction of State statutes, and on matters of State policy, of which no foreign Court is an equally competent judge; and if there is to be one omnibus proceeding, *the stockholders may be said to have a right* to the adjudication of the home courts in that proceeding.

The principle of exclusiveness of the home forum is, in every particular, as pertinent between home State Courts (or Federal Courts sitting within the home State) as one class, and Federal Courts sitting outside the home State, as another class, as it is between Courts of different States. This proposition is illustrated in

State vs. Curtis, 35 Conn., 374, cited above, and is supported by many familiar lines of Federal decisions, and, among others, the numberless decisions in which the Federal Courts recognize, in a great variety of forms, exclusiveness in a State Court by *priority* of some sort, even in cases where it would undoubtedly be *competent to Congress* to deny State exclusiveness or to deny State jurisdiction altogether.

No State has ever gone farther in recognizing exclusiveness on the part of sister States than this Court has gone in prescribing rules of self-restraint for the Federal Courts as between themselves and the State Courts.

The same spirit runs all through the legislation of Congress—notably in the instance of State jurisdiction in respect of national banking associations.

It is no answer to these contentions to say that such matters as those now in question may be heard in a Federal Court sitting within the limits of the home State in cases of diversity of citizenship. This concurrent jurisdiction in the local Federal Court arises, not from a lack of requirement of uniformity in the rule as to a single and exclusive jurisdiction, but from the fact that, under our duplex system of government, the several States of the Union have, for certain classes of cases, two concurrent systems of courts ; namely, their own courts and the Federal Courts. The Federal Courts, when they intervene, as they often do, in matters which. upon principle, are exclusively for the several States, intervene by direct force of the Constitution of the United States ; that is to say, by an express concession of the jurisdiction by the States, and inter-

vene, not as foreign courts, but as domestic courts of the States, accepted by the States as one branch of their judiciary, though not under its control, by the compact of the Federal Constitution. Thus, it is an elementary principle that no sovereign can enforce the penaf laws of another sovereign ; Massachusett cannot try a man for violation of criminal laws of Rhode Island. But the United States can, by force of the constitutoin, exercise this naturally exclusive State jurisdiction, and try a man in its courts for murder consisting in the violation of the murder laws of one of the States.

Tennessee vs. Davis, 100 U. S., 257-271.

There is almost no limitation upon the right of the Federal Courts to intervene in State affairs not dealing in the strictest sense with State government, when diverse citizenship or other reason for Federal intervention, such as do not go to Federal subject matter, exists. Not only may a Federal government enforce a State criminal law, but it may take from the State by force and arms a man under State indictment, and try the question of his guilt or innocence upon *habeas corpus*.

In re Neagle, 135 U. S., 1.

Cases (if such shall be cited) where Federal Courts, proceeding by diversity of citizenship, have entered upon matters which naturally, and upon principle, would be within the exclusive jurisdiction of a State, if not explainable upon other grounds, such as submission to the jurisdiction by the defendants actually before the Court, will prove in every instance to be explainable upon the principles above stated, which are elaborately set forth and illustrated in

Tennessee vs. Davis, cited above.

A suit in a Federal Court in the home State is, therefore, in a proper sense, a suit in the home forum

It has invariably been held no objection to the application of the doctrines above set forth, that in a given

instance hardship would result. Repeatedly has this Court denied equitable relief, on the ground that it could not deal broadly and fully with the whole matter,—and this, even where it seemed plain that no other tribunal could deal with the matter more broadly.

B. No jurisdiction except the home jurisdiction can by legislation annul or modify the rule just elaborated in respect of its operation upon corporations of such jurisdiction.

C. The State of Minnesota has never annuled or modified this rule of general jurisprudence.

In so far as the principles laid down under the subheading last discussed, are based upon the sovereignty of a State over corporations of its own creation, the State may, of course by express statute, abdicate its exclusive right to jurisdiction. A familiar illustration of this principle is found in the action of Congress in abdicating the exclusive jurisdiction of the United States, over suits concerning the affairs of national banking associations. In so far as the principles above laid down are based upon general rules of equity, and are designed, in their application to cases of this class, to protect the stockholders from confusion of rights and unequal burdens, it is evident that they may, by express statute of a competent jurisdiction, be modified or repealed as regards a particular class of proceedings, so long as the statute is not so palpably unreasonable and unjust as to be unconstitutional. Just as a state may by statute impose a personal liability upon stockholders for corporate debts, so a State may by express enactment require all

persons who become members of certain corporations, or classes of corporations, to surrender their right, in respect to the particular statutory liability in question, to the protection of the equitable principles under discussion. That is to say, the State may by express enactment require every person joining the corporation in question to consent to an *indidividual and several* liability enforceable against him alone by any single judgment creditor under the conditions described, such enforcement leaving the stockholder to obtain such remedies as he may, by way of contribution, or otherwise, against other stockholders, by subsequent application to a court of equity.

But it is equally evident that these things can be done only by the home State. So far as the question is one of sovereignty, the right of the State cannot be taken away by foreign statutes, but can only be waived by action of its own legislature. Again, so far as the question is one of the rights of stockholders, the result is the same. The superadded liability of stockholders is admitted on all sides to be contractual, and arises from the assent to the provisions of statutes and by-laws, which the Courts find in the act of joining the corporation. But as that act imposes a contractual liability or not, according to the legislation of the State which charters the corporation, only that State can increase or diminish the liability, or determine whether it shall be individual and several or joint, enforceable against any stockholder separately, or only against all in one proceeding.

Where the home State has not determined those questions by express statute, the general principles of equity above stated have full force. When it has so determined them, its determination is binding everywhere.

The power of a State to regulate all matters of procedure regarding its own corporations, and the exclusiveness of that power, are well brought out in

Canada So. Ry. Co. vs. Gebhard;
Republican Silver Mines vs. Brown, both cited above.

In what was said under the next preceding subheading, recent decisions of this Court were not forgotten, which will doubtless be cited as opposed to the contention that there must be a general and complete omnibus proceeding. The case most likely to be emphasized by the other side in this connection is

Whitman vs. Oxford Nat. Bank, 176 U. S., 559.

That case may be taken as fairly representative of the line of decisions likely to be put forward by the plaintiff's counsel, besides being the latest authoritative deliverance of this Court on the subject.

Hancock Nat. Bank vs. Farnum, 176 U. S., 640, merely adopted the decision of the Whitman case on the point now under discussion.

It will now be shown that these cases in no way conflict with any of the contentions of the present brief, but merely illustrate what has just been laid down as to the power of the home jurisdiction.

Whitman vs. Oxford Nat. Bank,

turned upon a provision in the Constitution of Kansas by which it is provided (Section 2, article 12, Constitution of 1859) that sums due from corporations "should be secured by *individual* liability of stockholders to an additional amount equal to the stock owned by each stockholder." In the Kan. Gen. Stat. of 1868, Chapter 23, Section 32, it is provided that whenever execution shall be issued against a corporation (certain classes of corporations excepted) and there cannot be found any property whereon to levy such execution, then execution may be issued "against *any of the stockholders*, to an extent equal in amount to the amount of stock by *him or her* owned, together with any amount unpaid thereon"; such execution to be issued in a manner specified, and only "upon an order of the Court in which the action, suit or other proceeding [against the corporation] shall have been brought or instituted; * * * *or the plaintiff in the*

execution may proceed by action to charge the stockholders with the amount of his judgment."

The plaintiff in the Whitman case had obtained a judgment against the Kansas corporation, upon which execution had issued, but no assets had been found upon which to levy, and it appeared that the corporation had, in fact, no assets. The judgment creditor then brought an action, in the United States Circuit Court for the Southern District of New York, against Whitman as a stockholder in the Kansas corporation, to enforce his individual liability under the Kansas constitution and statutes. It was objected that the suit should have been brought in equity against all the stockholders instead of at law against one; but the United States Supreme Court overruled the objection adopting the language of the opinion in

Flash vs. Connecticut, 109 U. S., 371.

The statutory provision in question in the latter case made the stockholders of a corporation "*severally and individually liable*" to the creditors of the company to the amount of their stock "until the whole amount of capital stock fixed and limited by such company" should have been paid in and a certificate thereof recorded. In that case the Court said (p. 380):

> "But in this case the statute makes every stockholder *individually* liable for the debts of the company for an amount equal to the amount of his stock. This liability is fixed, and does not depend upon the liability of other stockholders. There is no necessity for bringing in other stockholders or creditors. Any creditor who has recovered judgment against the company and sued out an execution thereon, which has been returned unsatisfied, may sue any stockholder, and no other creditor can. Such actions are maintained without objection in the Courts of New York, under Section 10 of the statute relied on in this case."

In accordance with this statement of the law, the Supreme Court held in the Whitman case that the action was properly brought, and a judgment for the plaintiff was affirmed.

Such a decision is entirely harmonious with the claims of the present brief.

It will be noted that the Constitution and statutes of Kansas expressly provided for an *individual* liability of *any one stockholder* to *any one creditor*, and expressly directed that such liability should be enforced in essentially the manner in which it was enforced. The decision, therefore, does not say that the general rules of equity, requiring adjudication of the rights and liabilities of all persons concerned, in a single suit or proceeding, are not recognized by the Supreme Court, nor that the general rule based upon sovereignty, which gives to the home forum exclusive jurisdiction of a large class of affairs relating to corporations, is not recognized by that Court and is not applicable to proceedings to enforce the superadded statutory liability to stockholders. The decision merely illustrates what has been said above, to the effect that the home State may abdicate its rights as sovereign to exclusive jurisdiction, and may attach to the statutory liability which it alone creates, such individual and *several* character and such forms of procedure, within reasonable limits, as it chooses.

The decision in the Whitman case is obviously sound and is supported by numerous earlier decisions of the United States and the State Courts, a large proportion of which are cited in the opinion. Those decisions establish the propriety of a separate proceeding against a single stockholder, *where such stockholder is by statute expressly rendered individually and severally liable.* But they go no further. In what was said under the next preceding subdivision of this brief, it was intended only to lay down general principles of equity recognized and enforced when not changed by statute. In the Whitman case and the other cases which support it, there had been such

changes by statute as regards a particular statutory proceeding. In the present case the constitutional and statutory provisions of Minnesota do not expressly or impliedly forbid the application of the equitable principles in question. It follows that, without more, those principles would be fully applicable to proceedings like the present one, and they seem always to have been distinctly recognized by the Minnesota Courts as so applicable.

In re Martin's Estate, 56 Minn., 420.
Minneapolis B. B. Co. vs. City Bk., 66 Minn., 443;
Johnson vs. Fischer, 30 Minn., 176;
all cited above.

But, as will now be shown, the matter is placed beyond any doubt by the fact that the Minnesota statutes, far from expressly providing for an *individual and several* liability, enforceable against a single stockholder, do expressly provide for an omnibus proceeding for the adjudication of the rights and liabilities of all parties in interest, in entire accord with the general principles of equity above laid down.

D. Regardless of the Existence and Binding Force of Such a General Principle of Jurisdiction as Has Been Laid Down, it Would be Competent to the Home Jurisdiction of a Corporation, in Dealing with Stockholders' Liability, to Create, or Enlarge, or Affirm or Recognize a Requirement of an Omnibus Proceeding in the Home Forum.

This proposition appears with sufficient clearness from the considerations already presented in the discussion of the two preceding subheads.

E. The State of Minnesota Has by Statute Affirmed—and, if the Rule Would Otherwise Not Have Been Fully Operative, Has Enlarged—the General Rule Requiring an Omnibus Proceeding to the Full Breadth of It, as Stated Above Under Subheading A, and That Rule, as so Stated, is Therefore a Binding Rule of Minnesota Law, and Upon That Ground, if Upon No Other, is for the Purposes of This Suit Binding Everywhere.

The provisions of the Minnesota Statutes on this question have already been set forth in the opening statement of this brief. It will be seen by reference to that statement that the statutes expressly provide for an omnibus proceeding, in which *(a)* an account shall be taken of the assets and debts of the corporation (Sect. 5906); *(b)* receivers (obviously of the *assets of the corporation*) shall be appointed, unless the corporation is without assets (Sects. 5906, 5907); *(c)* notice shall, whenever necessary, be given to all creditors to present their claims on pain of losing all share in the final distribution of any sums recovered (Sect. 5911); *(d)* there shall be a fair and just distribution among the creditors of any corporate assets there may be (Sect. 5908); *(e)* the amount of unpaid stock subscriptions shall be ascertained and collected (Sect. 5909); *(f)* if the debts still remain unsatisfied the respective further liabilities of directors and stockholders shall be ascertained (Sects. 5910, 5907); *(g)* the Court "*shall enforce the same by its judgment, as in other cases*" (Sects. 5907, 5910).

Certain qualifying phrases in some of these provisions in no way change the general nature of the proceeding required. For example, the words "when necessary," in the provision for an account of assets and debts

(Sect. 5906) obviously provide for a case in which the assets and debts are so few and present so little complication that they can be ascertained *without an account.* The same words, in Section 5911, obviously provide for cases, for example, in which all the creditors come into the suit without being summoned, or in which the *assets of the corporation* are shown to be ample for all debts, and nothing is necessary except an ordinary judgment and execution against the corporation.

The provisions of the statute, taken together, are plainly intended to provide for an omnibus suit, to which all persons interested shall be parties and in which all questions shall be adjudicated. The intention that the stockholders shall be made parties appears from the words at the end of Section 5907, "to ascertain the respective liabilities of such directors and stockholders, and *enforce the same by its judgment;*" and again at the end of Section 5910, "adjudge the amount payable by each, and enforce the judgment as in other cases." Such enforcement would clearly be impossible unless the stockholders were parties. The same intention appears from the words "In all cases in which * * * the stockholders * * * are made parties to an action in which a judgment is rendered" (Sect. 5909). The language of the opening clause of Section 5910 ("If the debts of the company *remain unsatisfied*") shows that that section is to be read with Section 5909, and both are, therefore, subject to the condition that the stockholders are made parties. In other words, the statute does not contemplate *any* enforcement of the personal liability of stockholders, except when they are made parties to the general suit.

The intention that all questions of rights and liabilities, *including the personal liability of stockholders,* shall be adjudicated in the same general suit, appears clearly from the express provisions above quoted, to the effect that the Courts "shall ascertain" (Sect. 5907), and again "shall adjudge" (Sect. 5910) the re-

spective liabilities of the stockholders, and "shall enforce" (Sects. 5907, 5910) the judgment against the stockholders in the ordinary way ("as in other cases").

The intention that the omnibus suit provided for shall be brought in the home forum is distinctly expressed in Section 5905: "he may file his complaint for that purpose [to charge the stockholders] in any district court [evidently of Minnesota] which possesses jurisdiction to enforce such liability."

Finally the fact that no distinction is contemplated in the treatment of domestic and foreign stockholders, appears *(a)* from the absence of any hint of a provision for reaching nonresident stockholders, and this in a statute obviously intended to provide for the whole subject; *(b)* from the language in the passages above quoted, where "the stockholders" are referred to, evidently as an entire class, and not "such stockholders as shall reside within the jurisdiction" or "such as can be reached with process."

The construction of the statutory provisions being so obvious, and their language in general so explicit, it is useless to object that such an interpretation makes the statute fatally defective for many cases, by providing no way of reaching non-resident stockholders. It is very evident from a reading of the statute that the possibility that there might be such stockholders was not present to the minds of the legislature, and that no provision was made for such a case. But this fact does not answer the proposition that the statute recognized and affirmed the general principle that justice can be done in such a case, only by adjudication in a single omnibus proceeding, or series of affiliated proceedings, in the home forum, of all questions in issue, and an adjustment of equities accordingly. That principle is, therefore, not weakened or discarded in connection with stockholders' liability by the Minnesota statutes, but is expressly embodied in those statutes to its full extent; and even without the existence of such a general equitable principle the

same rule would be, *by legislative enactment*, the law of this case.

The Minnesota Legislature ought undoubtedly to have made its statutory procedure complete and effectual by providing for substituted service on non-residents, and the result of its failure to do so may be that in cases like the present no effective remedy can be had in any court; but that consideration does not alter the effect of what has been clearly and explicitly enacted, in determining the character of the liability and the general rules of its enforcement; nor does this Court sit to correct the legislative errors of Minnesota.

F. The Minnesota legislation fatal to the present bill from the point of view that any specific form of procedure fixed in respect of such liability, by the jurisdiction which creates the liability, is an exclusive form of procedure, which goes out of the forum as well as in it; and the procedure now attempted must therefore fail on the ground not merely that it is not an omnibus proceeding, but that it is not the form of procedure prescribed by the laws of Minnesota.

The principle is well settled that when a purely statutory liability is created and a statutory remedy provided, the remedy enters into the nature of the liability and is exclusive of all others. There may be cases in which such a statutory remedy may properly be sought in courts (for example in the Federal courts sitting within the State which created the liability) whose practice does not provide precisely the procedure prescribed by statute; but in such a case substantially the same form of remedy must be followed, if any remedy is to be had. This principle of the exclusive-

ness of the statutory remedy is authoritatively established for the United States Courts by the decisions of the Supreme Court in :

Pollard vs. Bailey, 21 Wall., 520, 527.
Bank vs. Francklyn, 120 U. S., 747, 756, 758.

That the Minnesota statutes provide the manner in which the superadded liability of stockholders shall be enforced, has already been shown (see Minnesota statutory provisions set forth in the statement at the beginning of this brief, and the discussion under the preceding heads). That the present procedure is not of the kind prescribed by the Minnesota statutes is sufficiently established *(a)* by the considerations presented under sub-heading "E" above, which need not be repeated here ; *(b)* by the considerations presented under heading III, sub-heading A below, which therefore need not be stated at length here ; *(c)* by the fact that after the last decree in Rogers vs. Minneapolis Trust Company, Receiver, *et al.*, and after the appointment of the present plaintiff as so-called "Receiver," the Minnesota legislature passed a statute providing for the collection of the superadded liability of non-resident stockholders in a manner similar to that attempted in the present suit, thus showing that in the opinion of the Minnesota Legislature, there was up to that time no such statutory provision.

G. Even if the personal liability of these defendant stockholders could be established in a non-omnibus proceeding like the present, after the questions relating to the assets and indebtedness of the corporation had been adjudicated in a general suit, there has in the present case been no complete and binding adjudication of those questions.

It has thus far been contended that, both on general principles and by competent legislative enactment, the Constitutional liability of stockholders in Minnesota corporations can be enforced only in an omnibus proceeding, including within its scope the binding adjudication of the personal liability of each stockholder, and to that end having all the stockholders as parties. The proposition that, in the absence of a competent statute to the contrary, all questions concerning the assets and indebtedness of the corporation must be effectually adjudicated in a single suit, can hardly be seriously questioned. But the plaintiff may contend that there has been an adjudication of these matters; that as to such matters service on the corporation binds all the stockholders; and that the adjudication is, therefore, binding on all. He may then argue that neither the general rules of law nor the Minnesota statutes require the remaining questions, relating to the personal liability of each stockholder, to be adjudicated in a single omnibus suit. Such contention is confidently believed to be unsound, for reasons above set forth; but for purposes of argument it may for the moment be assumed to be true. The doctrine would then be that all material matters relating to *the indebtedness and the assets of the corporation*, and such matters only, must be determined in one suit. But so far as appears from the record there has never been, in the present case, any adjudication, in one or many suits, of *all* the material matters relating to the assets and indebtedness of the corporation. Such matters which are lacking, are the dates of incurring the various debts of the corporation; the character of such debts; the amount of unpaid subscriptions (which are assets of the corporation); what proportion, if any, of the indebtedness is, or was when contracted, in excess of the debt limit established by the by-laws, and therefore *ultra vires*, &c., &c. The pertinency of these matters is fully brought out in a subsequent portion of this brief (IV., B, *infra*). That they relate to the assets or to the indebtedness of the

corporation is obvious. It follows that they must be determined in the general omnibus proceeding, even under the limitation of the necessary scope of that proceeding conceded for the purposes of the present subheading. Admitting that limitation, it is still true that such a suit as the present one cannot be maintained until those matters have been adjudicated in the original forum in Minnesota.

But, conceding for the present that the actual adjudication of personal liability need not be in an omnibus suit, provided all matters relating to the assets and liabilities of the corporation are first adjudicated in such a suit, in a manner binding upon all stockholders, the Minnesota suits here relied on fail to fulfil that condition, not only because certain essential matters were not passed upon, but also because such adjudications as were in fact made in Minnesota, either in the insolvency proceeding or in Rogers vs. Minneapolis Trust Company, Receiver, *et al.*, are not binding adjudications *quoad* the personal liability of these defendants.

Unquestionably the Courts of Minnesota, under existing statutes, had power, *as between the creditors of the corporation and the corporation itself*, to adjudge the corporation insolvent; to put its assets into the hands of the Minneapolis Trust Company as Insolvency Receiver; to make such Receiver's degree of success in realizing upon the assets binding; to ascertain the list of creditors, and the amounts of their several claims, and priorities, if any, among them; to exclude creditors, resident and non-resident, failing to intervene and to distribute the assets of the corporation among intervening creditors, etc.

Those courts had power also to make their such action binding upon *resident* stockholders.

Those courts had power still further to make such action binding upon *non-resident* stockholders to the extent of extinguishing the actual value of their *stock:* for, to that end, a stockholder is necessarily bound by proceedings taken against the corporation.

But those adjudications, while operative to that extent, could not be operative *affirmatively* against *non-residents*, without a statute of Minnesota calling into action the power of the State over *non-resident* stockholders, and judicial proceedings, under such a statute, with substituted service, carrying out the provisions of the statute. As has been pointed out above, there was no such statute, and there were no such proceedings. It follows that those adjudications, in so far as now invoked as having had an *affirmative* operativeness upon non-resident stockholders are, in that aspect, of no effect.

The situation is similiar to that constantly presented, where property within a given State, belonging to a non-resident defendant, is attached or levied upon in an action against him, or is subjected to a trust adverse to his interests. In such case a judgment *in one sense* binds him, in that it takes away his such property, or subjects it to a trust; but as against him *personally*, it has no operation whatever, either *(a)* in the way of operating as a money judgment against him, or *(b)* as determining, against him personally, the questions involved in such trust proceeding, or *(c)*,—what is material here,—in adjudicating against him *any one of the features which may be essential to fixing him, where he can be found, with an affirmative liability* or to an *affirmative proposition of title*.

If this be not sound, then it is the law that, while the *final* step of declaring liability of a non-resident, upon a promissory note, for example, can be taken only where he can be found and served with process, nevertheless, any of the *essential elements* of his liability,—signature, consideration, standing of the plaintiff as endorsee, and the like,—can be established against him in his absence, *provided there be left open, for the forum in which he is found and served with process, the privilege of inquiring into the mere identity* of the defendant with the signer of the note, and the *mere conclusion of law of liability on his part*.

There is no such law. It is a fundamental principle that where a given tribunal or a given jurisdiction has no power to make an affirmative personal judgment against a given person, it has no power affirmatively to adjudicate, *as against him personally, any one essential feature* of such liability.

H. It is a general rule of jurisprudence that an ancillary suit must be brought in the same Court as the principal suit. The present suit is ancillary in this sense to the Minnesota suit of Rogers vs. Minneapolis Trust Co., Receiver, et al., and no Court except the State Court of Minnesota can entertain it.

The petitioner claims in opposition to the contentions above set forth, that the adjudication in Minnesota, in Rogers vs. Minneapolis Trust Company, Receiver, *et al.*, was binding upon the present defendants as to certain matters (relating mainly to the assets and indebtedness of the corporation) enumerated above. Under the present head, that claim may, for purposes of argument, be admitted. Assuming this point, two situations might in theory be presented. Those matters (of the assets and indebtedness of the corporation) might have been adjudicated in a suit brought solely for that purpose and terminating in a genuine *final* decree. The plaintiff might then proceed against non-resident stockholders, relying upon such final decree as to the matters so adjudicated by it. The considerations presented above go to show that such subsequent proceedings against stockholders would be inconsistent with general rules of law and with the Minnesota statutes. But that point need not be emphasized here, for the actual situation is a different one. The Minnesota suit of Rogers vs. Minneapolis Trust Company, Receiver,

et al., was not a suit merely for the adjudication of the questions of corporate assets and indebtedness, and did not proceed to a final decree. That the decree was not a final one appears from many considerations. For example, if fresh assets in Minnesota should turn up, as, for example, through the existence and enforcement of a claim hitherto unknown, for unpaid subscriptions of stock,—which would either satisfy or diminish the indebtedness,—such a situation would necessarily re-open the decrees as to stockholder's liability in the Rogers suit.

Other similar illustrations repeatedly suggest themselves. A suit like the present, therefore, lives from day to day only upon and by continuance of the situation in Minnesota. Outside of Minnesota, it floats upon the waves of Minnesota facts and pending Minnesota proceedings.

But a Minnesota decree which is thus open to fluctuation cannot be viewed as a final decree.

Again, the last paragraph of the decree (Record, p. 87) orders "that this Court retain jurisdiction of this cause until adjustment of all and several the rights and liabilities of the respective parties hereto." That is to say, whatever may be received this suit and in various other suits, will be turned over to the Hennepin District County Court of Minnesota to be dealt with and distributed there, and will not be paid over to any beneficial plaintiff by the Circuit Court below.

It is evident, therefore, that the present proceeding, as matters stand, is nothing but an ancillary proceeding to aid the Minnesota Court in carrying out its decree. Indeed, this is expressly admitted by the plaintiff himself in paragraph XV. of his bill (Record, p. 13, top). The bill says: "Your orators further aver * * * that said decree (Rogers vs. Minneapolis Trust Company *et al.*) cannot be executed without and beyond the limits of the jurisdiction of the State of Minnesota without the aid and interposition of equity in enforcing said decree in

or by *ancillary* proceedings." The prayer of the bill (Record, p. 13, middle) is *inter alia* "That this honorable Court will take jurisdiction of this *ancillary* Bill."

But it is a general principle of law that a proceeding purely ancillary to another proceeding, must be brought in the same court in which the main proceeding is pending. This principle finds its most familiar application in the rule that wherever a Federal Court has jurisdiction of an original proceeding, it has jurisdiction of any ancillary proceeding, regardless of the citizenship of the parties, and although if such ancillary proceeding were considered by itself it discloses no ground of federal jurisdiction. The cases to this effect are frequently rested on the ground that such ancillary proceedings *could not be brought in any other Court.* But the same principle is equally well established in the application of it sought here to be made. Thus in

I. Foster, Fed. Prac., (2nd Ed.), p. 43, (sec. 41),

after discussing the rule just cited, which gives Federal Courts jurisdiction of ancillary proceedings, of which, if such proceedings were not ancillary, they could not take jurisdiction, the author says:

> "Conversely there is a similar limitation upon the jurisdiction of the Federal Courts,"

and below on the same page,

> "proceedings supplementary to execution under a judgment of the State Court authorized by state statutes, against a debtor or, *or third persons*, cannot be instituted in or removed to the Federal Courts, although a creditor's bill may be."

The difference thus alluded to between such ancillary proceedings and a creditor's bill is obvious. It is the distinction between a suit by a judgment creditor upon a final judgment, obtained in a proceeding which has been entirely terminated by such judgment, and a suit to aid in carrying into effect a judgment not final, or

one which, though final in the ordinary sense, does not terminate the suit, because of statutory provisions for subsequent proceedings in the same court under such judgment. It has already been made clear that the present suit is not an ordinary suit by a judgment creditor upon a final judgment, but a suit purely ancillary to aid in executing a judgment of the Minnesota Court by no means final. The rule stated by the text writer above quoted is established by decisions of this Court and of the lower Federal Courts.

Bank vs. Turnbull, 16 Wall., 190.
Barrow vs. Hunton, 99 U. S., 80.
Pratt vs. Albright, 9 Fed., 634.
Buford vs. Strather, 10 Fed., 406.
Poole vs. Thatcherdeft, 19 Fed., 49.
Flash vs. Dillon, 22 Fed., 1.

There were some early cases which went much further than would now be sustained, in holding proceedings to be ancillary, though brought after final judgment in the first suit. But nothing has been found in the books to indicate any difference of opinion on the main proposition that a purely ancillary suit must be brought in the court having jurisdiction of the main suit. Nor has anything been found which furnishes any ground for pretending that the present suit is not an ancillary suit, within the meaning of the rule. The Federal cases naturally deal with the question originally as a question of the construction of the various judiciary acts, but it is evident from a study of the decisions that, at bottom, the doctrine is based upon the avoidance of such confusion and injustice as must result from the adjudication by separate tribunals having no common superior of questions arising in substantially the same controversy, that controversy being alive at the same time in both courts. Many questions of fact and law must necessarily be more or less involved both in the ancillary and in the original proceeding, and such questions would often be determined differently by different courts with great confusion and injustice as a

result. Whatever its basis, the doctrine clearly applies to the present case.

The case of Whitman vs. Oxford National Bank above cited, in no way conflicts with this doctrine, since in that case the original proceeding against the corporation was entirely concluded, and the suit in question was not ancillary, but independant.

It follows, then, that in the only aspect in which the present bill has any color of standing, and in the aspect in which it is expressly presented by the prayer of the bill, the Federal Courts, under a rule firmly established by many decisions, have no jurisdiction of the case, but such jurisdiction is exclusive in the Minnesota Court, in which the original suit of Rogers vs. Minneapolis Trust Company, Receiver, *et al.*, was brought. If that Court cannot do justice in the present case, the fault is in the Minnesota statutes, to be corrected by legislation of the nature of that which, as shown above, Minnesota has recently passed, and not by this Court.

III.

NO STANDING IN THE CIRCUIT COURT OF THIS PETITIONER AS "RECEIVER" OR OTHERWISE.

A. The Minnesota law recognizes no such "Receiver" as the petitioner claims to be; and his appoiatment is, therefore, void even in Minnesota.

There is no statute in Minnesota which even professes in the remotest way to deal with the question of appointing a Receiver to sue in behalf of creditors to enforce a stockholder's liability.

Minnesota Gen. Stats., 1878, Chapter 76, Sections 16–22.

Minnesota Gen. Stats., 1894, Sections 5904–5910.
Mohr vs. Minn. Elevator Co., 40 Minn., 343.
Willis vs. Mabon, 48 Minn., 14.
McKusick vs. Seymour, 48 Minn., 158.

In

Hale vs. Hardon, 95 Fed. Rep., 747, at page 771,

the majority opinion states that Minn. Gen. Stats. 1894, Section 5906, provides for the appointment of such a Receiver. That, however, is an error. That statute provision, as appears *by its own language* and *by its context*, is dealing with the assets *of the corporation* and not with the creditors' claims against stockholders. Its language is:

> "The Court shall proceed thereon as in other cases, and when necessary shall cause an account to be taken of the property and debts *to and from such corporation*, and shall appoint one or more receivers."

The Receivers thus provided for are patently Receivers of the property *of the corporation*, that is, such Receivers as the Minnesota Loan and Trust Company is, in the present matter.

Minnesota General Statutes 1878, Section 14 (Gen. Stats. 1894, Section 5902), provides:

> "A court in any stage of the proceedings may appoint one or more receivers to take charge of the property and effects *of such corporation* and collect and sue for and recover the debts and demands that are *due to*, and the property that *belongs to such corporation*."

This, too, only applies to assets *of the corporation*.

The petitioner is not a receiver who represents or stands in the place of the corporation. That position was already filled by the Minnesota Loan and Trust Company, the Insolvency Receiver.

The only other statutory provisions for the appointment of a Receiver are found in Minn. G. S., 1878, C. 66, Sect. 207 (G. S., 1894, Sect. 5351), as follows:

A receiver may be appointed

First. Before judgment on application of either party when he establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property or its rents and profits are in danger of being lost or materially injured or impaired, except in cases where judgment upon failure to answer may be had without application to the Court.

Second. After judgment to carry the judgment into effect.

Third. After judgment to dispose of the property according to the judgment or to preserve it during the pending of an appeal or when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment.

Fourth. In the cases provided by law when a corporation has been dissolved or in insolvent or imminent danger of insolvency and has forfeited its right as in like cases of the property within the State of foreign corporations.

Fifth. In such cases as are now provided for by law or may be in accordance with the existing practice except as otherwise provided herein.

In

Hale vs. Hardon,

the Court cites

Hanson vs. Davison, 73 Minn., 454 (1898).

The facts in that suit were as follows:

The corporation in question made a voluntary assignment, and paid a dividend of 29 per cent.

Thereupon one of the creditors brought suit for himself and others, under Minn. Gen. Stats. 1878, Chapter

76 (Gen. Stats. 1894, Chapter 76), to enforce the stockholders' superadded liability. All the other creditors intervened (p. 458, line 4). Judgment had been rendered against the corporation "and all of its stockholders within the jurisdiction of the Court" (p. 458, line 10) in favor of each of the creditors (p. 458, line 12) for the amounts of their several respective claims as adjudged in that action. In that action, which is fully described in

Harper vs. Carroll, 66 Minn., 487,

it was held that the creditors were entitled to a judgment against each stockholder for the full amount of his superadded liability, even though the aggregate amount of judgment against the several stockholders exceeded the ultimate requirement of creditors; *but* that the judgment should provide for only partial satisfaction, or partial successive satisfactions, of the judgments, by execution, up to the amount ultimately actually required—an application of the ordinary rule of giving judgment for the full amount of a bond, and then liquidating the requirements through the execution.

It was laid down in

Harper vs. Carroll, page 494,

that the issue of the executions should so be dealt with—by the Court itself, and not by the Receiver or the Sheriff—as to produce in the end proper contribution among different stockholders, and to that end that the judgment should provide for retaining judicial control over the issue of executions.

The elaborate and complicated method of enforcing the judgment against the stockholders is shown by the tables and provisions in the supplementary opinion in that case (pp. 510–516).

A reading of the opinions in these two cases shows upon what principles, and for what purposes, among others, the Court undertook to appoint a Receiver in Harper vs. Carroll.

The appointment was made in mere conformity with general principles of equity jurisprudence, on the theory that a large number of several plaintiffs were maintaining, by leave of statute, a single action against a large number of persons, severally indebted to them severally, who were liable, severally, to certain maximum amounts, and were to be adjudged liable to those full amounts; who, however, in case the total aggregate amount should not be required, were to be subjected to *execution* only for a *percentage* of the several judgments against them, and were to have adjustment and contribution, and all equities, as between themselves, and as between them severally and the creditors severally; but the Receiver so appointed in Harper vs. Carroll was a Receiver *merely to hold such moneys as the Court, through its supervision of the executions, should decide to collect*, and to distribute them according to the order of the Court.

In

Hanson vs. Davison

this Receiver undertook to sue, in Minnesota, a stockholder who had been within the potential jurisdiction of Harper vs. Carroll, but had been overlooked and not joined as a defendant there. The Court held *that he had no right to sue*, but that the proper remedy against the defendant was to amend, or to file a supplementary bill, in Harper vs. Carroll, and to bring him into that suit.

Niether of these cases, therefore, gives the slightest color of support to the present plaintiff's theory, but on the contrary, taken together and separately, in so far as they deal with his right to sue, these cases are adverse to it.

This leaves the doctrine of receivership in Minnesota precisely where it stands by the general principles of equity jurisprudence; and those principles never included the proposition that a court in one jurisdiction could or would attempt to appoint, under the style of "receiver," a mere *representative plaintiff* for the courts of other jurisdictions.

It will be observed that the majority opinion in

Hale vs. Harden

entirely misconceives and misstates the law of Minnesota, and is entirely without support in its supposed discovery of a Minnesota doctrine of *receivership to sue out of the State*, for superadded liability of stockholders, as distinguished from the ordinary doctrine of receivership.

In this misapprehension of the Minnesota statutes and cases, and in this supposed discovery of receivership law peculiar to Minnesota, lies the fallacy of

Hale vs. Hardon.

It may be proper for this brief to suggest that the contentions made by the *defendant*, in

Hale vs. Hardon.

as to jurisdiction in Minnesota as against a foreign stockholder, to appoint a Receiver, and the discussion of the Court on that subject, were also based upon a misapprehension of the whole situation. This brief has no occasion to deny that a large number of creditors, each with a claim against each of a large number of persons, but under obligation to pool their collections, and hold them subject to equities, and with no power to collect severally *and efficiently*, can, in Minnesota or anywhere else, without making anybody a defendant, get a Receiver appointed to hold such collections as may lawfully be made in, or may come to, their State; nor that any other jurisdiction may appoint an Ancillary Receiver to take collections made (if such collections may properly be made) within its territory; nor that such creditors may go in a body, into different jurisdictions, in equity, to sue different alleged debtors, according to the proper procedure of such different jurisdictions, subject to power in the courts of these jurisdictions so to deal with the matter of judgment and execution (as is constantly done in interstate probate matters) as to make the result of all the proceedings work to a harmonious whole, with the

result that there shall not be taken from the stockholders, as a whole, more than enough to give the creditors a net 100 cents on the dollar in all, and that there shall be worked out proper contribution as between the different stockholders. That question, however, is not presented here.

The real question in

Hale vs. Hardon

was, not whether the Minnesota decree appointing a receiver was efficient *as against Hardon* (for Hardon had no concern with that), but whether the Minnesota receivership, admitting its validity for *some* purposes, was *intended to have*, or *could have* an extra-territorial operation, and therefore how the Receiver, without joining the creditors as plaintiffs, had any cause of action to sue in a foreign jurisdiction.

B. Even if the Appointment of the Present Plaintiff is Valid in Minnesota, He Has no Standing in this Court.

The term " Receiver " is commonly used to describe several classes of persons. It will be sufficient for the present purpose, however, to distinguish between such receivers on the one hand as acquire *title* in one form or another to the property or assets in question, and such receivers as do not acquire such title. Receivers of the first class can, of course, sue anywhere in relation to the property, relying not on their office as receiver, but on their title. So a receiver who has obtained a judgment, may sue on it simply as a judgment creditor. But receivers of the second and much more common class, who are receivers pure and simple and not *assignees* or *quasi-assignees*, are merely officers of the court which appoints them, and are technically without any standing whatever in the courts of other jurisdictions. It must be clear from what has already been shown, that if the present plaintiff has properly

any standing at all as receiver even in Minnesota, he is a receiver of the class last mentioned. As such he cannot, as of right, maintain any action or suit in connection with his receivership outside of Minnesota.

Booth vs. Clark, 17 How., 322, 331.
High, Receivers, Sect. 239.

It is true that by comity such a Receiver has sometimes been allowed to sue in a foreign State.

High, Receivers, Sect. 241.

But this privilege is granted with distinct recognition of the fact that it is a grant of a privilege, and in no way a recognition of a right; it rests entirely in the discretion of the Court; and it is not given when the Court for other reasons looks unfavorably upon the suit. The disposition of the United States Courts has always been against suits by such foreign receivers, and even were this not so, the present suit, in view of all the defects which have been pointed out, is hardly a proper occasion for granting by comity the privilege in question.

IV.

VARIOUS MISCELLANEOUS QUESTIONS, RELATING TO JURISDICTION AND OTHER MATTERS, PERTINENT TO ONE OR BOTH THE ABOVE-MENTIONED POSSIBLE ASPECTS OF THE BILL.

A. The creditors being the real plaintiffs, there is no diversity of citizenship, and therefore no Federal jurisdiction.

Under this head it becomes unimportant whether we treat the present plaintiff, assuming his appoint-

ment to be valid at all, as merely an officer of the Minnesota Court, or as an assignee of the *choses in action* which arise out of the liability of the stockholders. In any case the real plaintiffs are the creditors.

In Minnesota the claims of creditors against stockholders of corporations founded on the statutory or constitutional provisions, are claims enforcible only by the creditors themselves, but not by the corporation. The corporation cannot enforce the liability, for it is no part of the corporation assets, and not even the receiver for the corporation can enforce the liability.

Minn. Baseball Co. vs. City Bank, 66 Minn., 441 (1896).
Palmer vs. Bank of Zumbrota, 65 Minn., 90 (1896).
In re People's Live Stock Co., 56 Minn., 180 (1894).
International Trust Co. vs. American Loan & Trust Co., 62 Minn., 501 (1895).

The Receiver in this case is at most nothing more than an assignee of the claims of the creditors. If he is to be viewed as an assignee, the case seems, for purposes of Federal as against State jurisdiction, to come within the rule that there should be diversity of citizenship between the original creditors and the defendant.

According to the cases, it must affirmatively appear that the plaintiff's assignor could have brought suit on the contract if no assignment had been made.

Brock vs. North Western Fuel Co., 130 U. S., 341.
Shoecraft vs. Bloxham, 124 U. S., 730.

And see Act of March 3, 1875, U. S. Stat., 470, as amended by Act of March 3, 1887, U. S. Stat., 552 (Rev. Stat., Sect. 629).

This applies to an assignment by operation of law, such as an assignment in bankruptcy or a receivership. See

Sere vs. Pitot, 6 Cranch, 332,

to the effect that a suit brought by an assignee in insolvency of a trading company, composed of persons who were citizens of the same Territory as the defendants, could not be maintained in the Federal Courts.

And see Bradford vs. Jenks, 2 McLean, 130.

The term "assignee" covers not merely persons to whom is technically transferred the contract in controversy, but any one who by virtue of any transfer to him can claim an interest.

Plant Co. vs. R. R., 152 U. S., 71.
See Brook vs. Co,, 130 U. S., 341.
Shoecraft vs. Bloxham, 124 U. S., 730.

The doctrines of law above cited apply to assignees of contract rights.

Bushnell vs. Kennedy, 9 Wall, 387.
Shoecraft vs. Bloxham, 124 U. S., 730.
Mexican Nat. R. R. vs. Davidson, 157 U. S., 201.
Republic Iron Mining Co, vs. Jones, 37 Fed. Rep., 721.
Chase vs. Sheldon Roller Mills Co., 56 Fed. Rep., 625.
Simmons vs. Ysilanto Paper Co., 33 Fed. Rep., 193.

Also to suits on a judgment, and unless the assignor could have maintained the suit the assignee cannot do so.

Metcalf vs. Watertown, 128 U. S., 586.
Mississippi Mills vs. Cohn, 150 U. S., 202.

The jurisdiction is to be determined according to the status at the time the suit is brought and not at the time when the assignment is made or when any of the facts averred as a cause of action arose.

Jones vs. Shapera, 57 Fed. Rep., 457.

But if the plaintiff be regarded merely as a Receiver and in no sense as an assignee, it is even more plainly true that he has himself no substantial interest in the

controversy, but merely acts for and represents the creditors, and the citizenship of the creditors, as the real plaintiffs, must determine the jurisdiction.

The bill alleges the citizenship of the titular plaintiff, William E. Hale, so-called Receiver, as being in Minnesota, and that of all and several the defendants as being in Pennsylvania, with residence in the Eastern District of said State; but there is, strictly speaking, no allegation in the bill of the citizenship of the creditors. It appears, however, from the lists of creditors in the Minnesota records attached to the bill, that some of the creditors are residents of Pennsylvania. It follows that there are substantial plaintiffs of the same citizenship as the defendants, in which case there is, of course, no Federal jurisdiction.

Hoe vs. Jameson, 166 U. S., 395.
Smith vs. Lyon, 133 U. S., 315.

B. Lack of allegations sufficient to show that the conditions of statutory liability exist.

Under this head the bill will be considered in the second aspect above discussed (as a bill auxiliary to the Minnesota suit), but all question as to what matters should be adjudicated in the general suit, and what, if any, may be left to be determined in subsequent distinct suits, will for the moment be waived. There are a number of matters, essential to the liability of these defendants, and which must therefore be established in *some* suit before these defendants can be held, which are not in any way alleged in the bill, and which do not appear ever to have been adjudicated in any other suit. As the bill discloses nothing on these essential matters, it has no equity.

The matters thus omitted are as follows:

(1) The constitutional and statutory liability imposed on stockholders for debts of the corporation in-

cludes only contract indebtedness. There is no liability for debts incurred on account of torts.

Dodge vs. Minn. Plastic State Roofing Co., 16 Minn., 368 (1871).
Cook on Stock & Stockholders (3d Ed. 1894, Sec. 217).
Morawetz on Corporations, Secs. 880, 886, and
Childs vs. Boston Iron Works, 137 Mass., 516 (1884).

The bill, paragraph IV. (Record, p. 8), refers to "sundry indebtedness to divers persons and bodies corporate, which said indebtedness aggregated on said 20th day of May, 1893, upwards of three million dollars, all whereof was evidenced by debentures, guaranteed notes and obligations and other certificates of indebtedness issued in the regular course of business as aforesaid, and all whereof, on said last-mentioned date, constituted legal valid and subsisting indebtedness against said corporation."

And in paragraph XII. (Record, p. 12) the bill refers to "the aggregate valid and subsisting indebtedness."

It is not made to appear how the alleged indebtedness arose, or the nature or description of it or any part of it, or whether the same arose in contract or tort, or that it did not include indebtedness for torts.

It does not appear in any way that the indebtedness was of such a nature as to affect any stockholder with liability.

It does not appear that the judgment of the court described in the first subdivision of paragraph VIII. of the bill (Record, p. 9) did not include forms of indebtedness for which the defendant as a stockholder would not have been liable.

(2) Article 4 of the Articles of Incorporation of the Northwestern Guaranty Loan Co. (Record, p. 21, last paragraph) provides that "the highest amount of indebtedness or liability to which said corporation

shall at any time be subject * * * shall be three-fourths of the paid-in capital stock," excluding certain forms of indebtedness.

The provision regarding stockholders' liability for debts or a corporation in Article X., Sect. 3, of the Constitution of Minnesota (above quoted) is as follows: "Each stockholder in any corporation * * * shall be liable to the amount of stock held or owned by him."

There is no statute extending or in any way amplifying this liability.

See Mohr vs. Minnesota Elevator Co., 40 Minn., 343 (1889):—

> "The obligation relied upon as still resting upon the defendant stockholder is the creature of the Constitution and has no existence at common law. The responsibility of the stockholders is determined by the fundamental law when they became stockholders. *They then agree to become liable both in a corporate capacity and individually to all who shall give credit to the corporation.*"

Such being the liability it is clearly only a liability for *legal debts* of the corporation.

By the Articles of Association here all persons dealing with the corporation were bound to take notice of the debt limit, and that any debt greater than that set forth in the articles was *ultra vires* and illegal.

"It is a settled rule that a person who deals with a corporation must at his peril take notice of its charter or articles of association," and debts incurred or contracts made contrary to express mandates of the charter are absolutely void.

If a corporation has authority to borrow to a certain amount only it will not be liable upon a loan made in excess of that amount to a party who had notice that the borrowing powers of the company were exhausted.

Morawetz on Corporations, Sect. 591, 600, 657, 686, 687, and 695.

In

Oswald vs. Minneapolis Times Co., 65 Minn. 249 (1896.)

where it was claimed that the debts were contracted beyond the debt limit, the Court said that "conceding without deciding that the defense would be available" there was no proof of it.

It is not made to appear in the declaration in the present case (1) that under the constitution and laws of Minnesota these defendants are or were liable for any debts of the corporation contracted in excess of a debt limit fixed by its articles of incorporation at the time or times of their becoming the owners of shares of stock or at the date of the arising of the respective debts; (2) or at what time or times the defendants became the owner of their several alleged shares of stock; (3) or what was the limit of indebtedness then fixed by the articles of incorporation; (4) or when the alleged indebtedness of the corporation or the several debts composing the same arose; (5) or but that the alleged indebtedness of the corporation mentioned in the declaration was in excess of the lawful indebtedness which the corporation was by law authorized from time to time to incur; or but that such excess of lawful indebtedness was known to creditors; (6) or if so in excess, to what extent; (7) or what particular debt were incurred in excess of such limit; (8) or when they were incurred.

(3) The allegations in the bill, in paragraph IV. and paragraph XII., regarding the indebtedness of the corporation, nowhere state whether (1) it was not in part or fully secured (2) or what the securities were (3) or by whom held (4) or for what particular debts.

In fact, in paragraph IV. it is stated that the indebtedness is evidenced by "debentures and guarantee notes" so that there is no clear allegation anywhere that there was any existing net indebtedness over the value of corporate assets *and securities.*

(4) The amendment to Article 4 of the articles of incorporation (Record, p. 21), excludes from the indebtedness which has a fixed limit, "its contingent liability of guaranty," and "debentures issued by or other obligations, * * * the payment of which is secured by real estate mortgage or other securities," and "payments made to it to meet unmatured obligations due to the corporation."

The corporate indebtedness for which the petitioner is trying to charge the defendants is, on the facts alleged in his bill (see paragraph XII. and paragraph IV. in excess of the debt limit (Record, p. 21, bottom).

The petitioner does not allege, however, that such excess or any part thereof, is within the exceptions above referred to of debts excluded.

(5) It is not made to appear but that some part of the stock issued by said corporation has not been paid in in full, and if so whether any, and if so what steps have been taken to enforce payment therefor.

By the provisions of G. S. 1894 Minn., Sections 2600, 2796, stockholders are liable for all upaid instalments on stock, and provisions is made for the enforcement of this liability in Sections 2601, 2602, and also Sections 5905–5910 (G. S. 1878, C. 76, Sections 16–22).

When the corporation has been adjudicated insolvent, or when all its property has been sequestrated the proper party to enforce the liability of stock, holders to pay up their stock subscriptions is the Receiver of the corporation or the assignee in insolvency (not the alleged Receiver appointed in the proceedings mentioned on paragraph VIII. of the bill), such unpaid subscriptions being part of the assets of the corporation.

Spooner vs. Bay S. Louis Syndicate, 47 Minn., 464, 1891.

Minn Thresher Mfg. Co. vs. Langdon, 44 Minn., 37 (1890).

Merchants Nat. Bk. vs. N. W. Mfg. Car Co., 48 Minn., 361 (1892).

St. Louis Car Co. vs. Stillwater Street Ry. Co., 53 Minn., 129 (1893).
In re People's Live Stock Co., 56 Minn., 180 (1894).
Spilman vs. Mendenhall, 57 N. W. Rep., 468 (1894).

It has also been held that where insolvency proceedings are pending, and an assignee acting, there may be no occasion for a Receiver to be appointed to enforce the constitutional liability of stockholders. All the methods to collect *corporate assets* must first be exhausted before resort is had to the constitutional liability of stockholders.

"In any action under G. S., C. 76, the corporate assets must be sequestrated and exhausted before resort can be had to stockholders to pay the deficiency."

"These stockholders can only be adjudged liable when * * * the corporation itself is found unable to liquidate the indebtedness."

Mohr vs. Minn. Elevator Co., 40 Minn., 343.
Minneapolis Paper Co. vs. Swinburne Printing Co., 66 Minn., 378 (1893).
See Walter vs. Seven Corners Bank, 58 Minn., 434 (1894).
International Trust Co. vs. Amer. Loan & Trust Co., 62 Minn., 501 (1895).

This constitutional liability on shares of stock is only "to pay an amount equal to their face value *if necessary*."

Holland vs. Duluth Co., 65 Minn., 324 (1896).

The plaintiff therefore must aver that all corporate assets have been exhausted and applied to the payment of debts before he can enforce the stockholders' liability; and there is no averment in the declaration that this is so or that any steps have been taken to enforce payment of unpaid subscriptions.

(6) It is not made to appear that the defendants

had notice of the presentation of the claims of the creditors who became parties to the action in the District Court of Hennepin County subsequent to the plaintiff in that suit as alleged in the last clause of paragraph 8 of the declaration.

A defendant stockholder in a suit brought to enforce, not a liability of the corporation, but a liability to creditors, is entitled, to notice of the presentation of the claim of every creditor who subsequently becomes a party to the action.

Spooner vs. Bay St. Louis Syndicate, 47 Minn., 464 (1891).

SUMMARY.

The considerations which have been presented in this brief, as considerations believed to be fatal to the success of the present suit, may be summed up,—with a less elaborate classification than that adopted for their exposition,—as follows :

I. The suit cannot be maintained as a suit upon a binding personal judgment

A. Because there was no legal way in which the Minnesota judgments in Rogers vs. Minneapolis Trust Co., Receiver, et al., could be made binding on the present defendants as to their personal liability.

B. Because there was no attempt in that suit so to bind them, and no claim in the bill that they were so bound, in that or any other suit.

II. The suit cannot be maintained as a suit relying on the adjudication in the Minnesota proceedings of certain material questions, in a manner binding upon the present

defendants, and seeking to determine in the United States Circuit Court the remaining questions necessary to establish the personal liability of the present defendants.

A. Because on general principles of law, affirmed and adopted by competent statutes in Minnesota, such personal liability could properly be established only in a single omnibus proceeding or series of proceedings in the home forum, to which all interested persons should be parties, and in which all material questions should be determined.

B. Because the present suit departs from the form of remedy provided by the Minnesota statutes, which form of remedy is exclusive.

C. Because, even if the question of personal liability need not be determined in the omnibus suit, all material questions relating to the debts and assets of the corporation must be so determined, and in a manner affirmatively binding upon all stockholders; and these requirements have not been met in the present instance.

D. Because the present suit is clearly a proceeding merely ancillary to the Minnesota suit of Rogers vs. Minneapolis Trust Co., Receiver, et al., and can, therefore, be maintained only in the same court in which that principal suit is still kept alive.

III. The present plaintiff has no standing in this Court.

A. Because there was at the time of his appointment no provision of Minnesota law under which such an alleged Receiver could be validly appointed.

B. Because, even if his appointment were valid in Minnesota, he has no title to any property in question, and therefore could sue outside of the Minnesota courts only by comity; and the present

suit presents no occasion for the exercise of such comity.

IV. The Federal Courts have no jurisdiction of the present case, because the creditors are the real plaintiffs, and in the light of that fact, there is not the requisite diversity of citizenship.

V. Whatever may be the form of proceeding by which the liability of stockholders in Minnesota corporations should properly be enforced, certain matters essential to the liability of the defendants are not alleged in the bill, and do not appear ever to have been adjudicated anywhere.

Respectfully submitted by
HEMAN W. CHAPLIN.

Supreme Court of the United States.

No. 77. October Term, 1902.

William E. Hale, Receiver,

v.

Edward P. Allinson *et al.*

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIÆ.

Heman W. Chaplin, of Westwood, in the State of Massachusetts, respectfully shows to this Honorable Court the following facts:

1. Said Heman W. Chaplin is an attorney admitted to practice in the Circuit Court of the United States for the First Circuit in the District of Massachusetts and in the United States Circuit Court of Appeals for the First Circuit.

2. There is now pending in said Circuit Court of Appeals a cause begun by writ of error, in which Harriet N. Tyler, as she is administratrix of the goods and estate of Edwin A. Norton, deceased, intestate, is the plaintiff in error, and William E. Hale, described in the record of said cause as the Receiver of the Northwestern Guaranty Loan Company of Minnesota, is the defendant in error; and in said cause said Heman W. Chaplin is attorney of record and counsel for said plaintiff in error.

3. Said writ of error was brought to reverse a recent judgment of the Circuit Court of the United States for the First Circuit, in the District of Massachusetts, for $133,380,

including interest; and, in particular, is based upon alleged errors in overruling a demurrer to the declaration in the action at law in which said judgment was rendered (said demurrer going to the merits), and certain rulings and refusals to rule, at the trial of said action at law, alleged by the plaintiff in error to have been erroneous, and set forth in a bill of exceptions duly allowed.

4. Said action at law was based upon the same records of courts of the State of Minnesota which are relied on in said case of Hale *v.* Allinson, now pending in this Court, being the same records which were also relied on by said William E. Hale, Receiver, as plaintiff in error, in the case of William E. Hale, Receiver, plaintiff in error, *v.* Hardon, defendant in error, reported in 37 C. C. A. 240, and the same relied on by said William E. Hale, Receiver, in the action at law out of which said cause in error, last mentioned, arose; and the conclusions reached and the judgment in said cause of Hale, Receiver, plaintiff in error, *v.* Hardon, defendant in error, were followed by said Circuit Court, in its overruling of the demurrer in said action of Hale, Receiver, *v.* Tyler, administratix; and upon and through those conclusions a verdict was, in said action of Hale, Receiver, *v.* Tyler, administratix, directed for the plaintiff; said conclusions, and each of them, being sought to be reversed in said cause in error of Tyler *v.* Hale.

5. The questions of law involved in said conclusions have been the subject of a serious division of opinion among the different judges in the First Circuit; one of the Circuit judges having ruled upon them in a manner adverse to said Hale, Receiver, at the trial, in said Circuit Court, of said action of said Hale *v.* Hardon; and the other Circuit judge having presented the same views in a dissenting opinion, in said cause of said Hale, Receiver, plaintiff in error, *v.* Hardon, defendant in error; and it appearing, by direction of the Court, in express terms, in the bill of exceptions in said cause of Hale *v.* Tyler, that the Judge at said trial ruled in favor of the plaintiff, upon said questions of law, and directed a verdict for the plaintiff, in opposition to his own

views of the law, but in what he considered to be a necessary yielding to the decision in said cause of Hale, Receiver, plaintiff in error, *v.* Hardon, defendant in error, in said Circuit Court of Appeals. Said propositions of law have also presented themselves and been passed upon in different ways in other suits, still pending, either in Circuit Courts of the United States, or, on appeal, before United States Circuit Courts of Appeals, upon substantially the same record, and upon precisely the same Minnesota records. In all these suits said Hale, Receiver, is plaintiff, and seeks to enforce, in some form, the liability which he seeks in said suit pending in this Court, and sought in said suit of Hale *v.* Tyler.

6. The claim involved in said cause of Tyler, plaintiff in error, *v.* Hale, Receiver, defendant in error, is one of the largest claims, if not the largest, arising in connection with this receivership; and property which the defendant in error in said cause is now seeking to reach, as estate late of said Norton, is of large value, to wit, of the value of not less than $75,000.

7. It would appear that it may be open to this Honorable Court, in said cause of Hale, Receiver, *v.* Allinson, to declare and establish the law in respect of the various questions of law abovementioned, and thereby in effect to determine said pending cause of Tyler, plaintiff in error, *v.* Hale, defendant in error.

In support of the foregoing allegations, said Heman W. Chaplin hereby offers to this Honorable Court, and prays for leave to file herewith, a duly certified copy of the record in said cause of Harriet N. Tyler, plaintiff in error, *v.* William E. Hale, Receiver, defendant in error.

Wherefore said Heman W. Chaplin, being requested so to do by said Harriet N. Tyler, administratrix, respectfully moves this Honorable Court that he be permitted, as *amicus curiæ*, to file in this cause a brief in support of the contentions of the defendants in error here.

Supreme Court of the United States.

No. 77.—October Term, 1902.

William E. Hale, as Receiver, &c., vs. Edward P. Allinson et al. } On writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[January 19, 1903.]

This case comes here by virtue of a writ of certiorari directed to the Circuit Court of Appeals for the Third Circuit. It is a suit in equity brought by a foreign receiver, in the United States Circuit Court for the Eastern District of Pennsylvania, to enforce the liability of stockholders, residing in Pennsylvania, of the Northwestern Guaranty Loan Company, a corporation of Minnesota.

Demurrers were filed, setting up, among other grounds, that the receiver appointed under proceedings in Minnesota had no right to sue in any court of a foreign jurisdiction; also, that, even if the receiver had the right to sue, there was an adequate remedy at law for whatever rights might exist in the receiver or any other person, and that no ground of equitable jurisdiction was stated. The Circuit Court sustained the demurrer on the ground that the remedy, if any the complainant had, was at law. (102 Fed. Rep. 790.) The judgment was affirmed by the Circuit Court of Appeals for the Third Circuit. (106 Fed. Rep. 258.)

The facts are these: In May, 1893, the loan company was adjudged insolvent, in proceedings instituted under the Minnesota statute, in the District Court of Hennepin County, which court had jurisdiction, and the Minneapolis Trust Company was appointed a receiver of the corporate assets and took possession thereof, and proceeded to the discharge of its duties. In November, 1893, one Arthur R. Rogers, who was the assignee of a judgment creditor of the corporation, whose execution against it had been returned wholly unsatisfied, filed a bill in equity in the Minnesota State court in behalf of himself and all other creditors of the loan company against that company and all its stockholders, for the purpose of enforcing the stockholders' liability to the creditors, provided for by the statutes of Minnesota. Out of about five hundred stockholders some twenty-three only resided in the State of Minnesota and were served with process.

The creditors of the loan company, as required by the court, came in and proved their debts against the company, but, none of the non-resident stockholders had been served with process in the action and not one of

them appeared therein. It was adjudged that the defendants who were named as resident stockholders of the loan company, and over whom the court had acquired jurisdiction by the service of process upon them, were liable to the extent of the par value of their stock for the debts of the company. The decree also found a list of the creditors who had intervened and the amounts due to each of them from the loan company.

In addition to giving judgments against the resident stockholders of the loan company in favor of its ascertained creditors the court also decreed as follows:

"Tenth. That for the purpose of enforcing and collecting said judgments and all thereof and any and all liability thereon or in anywise incident thereto, and any and all liability upon the part of non-resident stockholders of said Northwestern Guaranty Loan Company, against whom no personal judgment for the ascertained liability is herein rendered, and disbursing the amounts so collected as hereinafter provided, W. E. Hale, Esq., has been by the order of this court appointed receiver, and has given bond in the sum of twenty-five thousand dollars and qualified as such receiver. That by the terms of said order of appointment said receiver was and hereby is authorized, empowered and directed to take any and all appropriate or necessary steps or proceedings for the purpose of collecting the judgments herein rendered, and was and hereby is authorized, empowered and directed to take any and all necessary or appropriate steps or proceedings against the non-resident stockholders of said defendant Northwestern Guaranty Loan Company against whom no personal judgment herein has been ordered, for the enforcement and realization upon their aforesaid stockholders' liability, and to that end said receiver be and hereby is authorized, empowered and directed to institute and prosecute all such actions or proceedings in foreign jurisdictions as may be necessary or appropriate to this end."

The decree also provided that jurisdiction of the cause should be retained until the adjustment of the several rights and liabilities of the respective parties.

Thereupon the receiver thus appointed commenced this suit in equity to recover from the resident stockholders in Pennsylvania the full amount of the par value of the shares of stock held by them. Rogers, the assignee of the judgment creditor in the Minnesota action, was joined as complainant in this suit with the receiver, and a demurrer having been interposed on the ground, among others, of this joinder, the Circuit Court, upon the trial and upon the application of complainant, granted leave to dismiss the assignee as a party, and the case proceeded thereafter in the name of the receiver alone.

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

Of the several grounds of demurrer to the bill herein, only two need be specially noticed. They are (1) that this complainant (receiver) has no

right to sue in the courts of a State foreign to that in which he was appointed; and (2) that, even if he had the right to sue, there was no ground of equitable jurisdiction set forth in the bill, and the complainant's remedy, if any he had, was at law.

The Circuit Court sustained the demurrer on the ground that no case for equitable relief was stated, and dismissed the bill without prejudice. The Circuit Court of Appeals sustained that view of the case and affirmed the judgment, but also intimated that it was strongly inclined to the opinion that the complainant's appointment as receiver by the Minnesota court did not entitle him to sue as such in a foreign jurisdiction.

In our judgment both grounds of demurrer were well taken.

First. As to the right of the receiver appointed in the Minnesota action to sue in a foreign State. The portions of the constitution and laws of Minnesota which are applicable are set forth in the margin.*

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*Constitution of Minnesota, article X, sec. 3, provides:

Each stockholder in any corporation (excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him.

The General Statutes of Minnesota of 1894, chapter 76, p 1595, provide among other matters, for the method of enforcing the liability of stockholders, as follows

Section 5897. Whenever a judgment is obtained against any corporation incorporated under the laws of this State and an execution issued thereon is returned unsatisfied in whole or in part, upon the complaint of the person obtaining such judgment, or his representatives, the District Court within the proper county may sequestrate the stock, property, things in action and effects of such corporation, and appoint a receiver of the same.

Section 5905. Whenever a creditor of a corporation seeks to charge the directors, trustees or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his complaint for that purpose in any District Court which possesses jurisdiction to enforce such liability.

Section 5906. The court shall proceed thereon, as in other cases, and, when necessary, shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers.

Section 5907. If, on the coming in of the answer or upon the taking of any such account, it appears that such corporation is insolvent, and that it has no property or effects to satisfy such creditors, the court may proceed, without appointing any receiver, to ascertain the respective liabilities of such directors and stockholders, and enforce the same by its judgment, as in other cases.

Section 5908. Upon a final judgment in any such action to restrain a corporation or against directors or stockholders, the court shall cause a just and fair distribution of the property of such corporation and of the proceeds thereof to be made among its creditors.

Section 5909. In all cases in which the directors or other officers of a corporation, or the stockholders thereof, are made parties to an action in which a judgment is rendered, if the property of such corporation is insufficient to discharge

The constitution of Minnesota it will be seen simply imposes a double liability upon the stockholders. The statutes of the State provide the only means of there enforcing that liability.

The Supreme Court of Minnesota has decided that the liability of the stockholder is to the creditor, and that the receiver of the company cannot enforce it. It was held as far back as 1879, in *Allen* v. *Walsh*, (25 Minn. 543,) that the only remedy to enforce the liability of stockholders was laid down in the general statutes of Minnesota, chapter 76, (the one in question,) and that the statute contemplated a single action, in which all persons having or claiming any interest in the subject of the action should be joined or particularly represented, and their respective rights, equities and liabilities finally settled and determined. The receiver of an insolvent corporation was not a proper party to bring such action.

In *Palmer* v. *Zumbrota*, (65 Minn. 90, decided in 1896,) the court referred to *Allen* v. *Walsh*, as holding that a receiver could not maintain an action to enforce the liability of the stockholders, and held that the direction in the decree then under review ordering the receiver to sue the stockholders on such liability was a harmless error which had been corrected before it was assailed.

Again, in *Minneapolis Baseball Company* v. *State Bank*, (66 Minn. 441, decided in 1896,) it was once more distinctly held that a receiver could not, under chapter 76, maintain in the courts of that State an action to enforce such liability of stockholders. The Supreme Court of Minnesota has, however, in a very late case, *Hanson* v. *Davison*, (73 Minn. 454, decided in July, 1898,) somewhat limited or explained *Allen* v. *Walsh*, (*supra*,) and, in the course of his opinion, the Chief Justice expressed views as to the right of a receiver to sue in another State under the facts which he rehearsed. The case does not, however, overrule the prior cases

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its debts the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the company.

Section 5910. If the debts of the company remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers and of the stockholders, and to adjudge the amount payable by each, and enforce the judgment, as in other cases.

Section 5911. Whenever any action is brought against any corporation, its directors or other superintending officers or stockholders, according to the provisions of this chapter, the court, whenever it appears necessary or proper, may order notice to be published, in such a manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and, in default thereof, to be precluded from all benefit of the judgment which shall be rendered in such action, and from any distribution which shall be made under such judgment.

above referred to. The point as to the right of a receiver to sue in a foreign jurisdiction was not in issue or involved in the case. The material facts were, as stated in the opinion, that a creditor of the Citizens' Bank, which was an insolvent concern, brought an action (*Harper* v. *Carroll*, reported in 66 Minn. 487) in behalf of himself and all other creditors against all of the resident stockholders thereof, pursuant to the provisions of chapter 76, (*supra*.) The creditors of the bank intervened and proved their claims against it, and judgment was duly rendered in the action against the bank and all of its stockholders within the jurisdiction of the court in favor of each of the creditors, of whom the complainant herein was one, for the amount of their claims respectively, as adjudged in that action. Executions were issued on each of these judgments, which were returned, and there still remained unpaid upon them the sum of forty odd thousand dollars, exclusive of interest. The defendant in the *Hanson* v. *Davison* action was named as a defendant in the other, or *Harper* v. *Carroll*, action, but being a non-resident, the court in the latter case did not acquire jurisdiction to render a judgment against her. In the opinion in *Hanson* v. *Davison*, the court, after referring to the fact of non-residence, continues:

"She was, however, a stockholder of the bank at the time it became insolvent and made its assignment, and ever since has been, and now is, the owner of the capital stock thereof of the par value of $1,500, and now has property within this State to satisfy her liability to the creditors of the bank as a stockholder therein. The existence of such property within the jurisdiction of the court was discovered after the entry of the judgment in the *Harper–Carroll* case. Upon the discovery of such property, the plaintiff herein obtained leave of court to bring this action against the defendant, to the end that her statutory liability might be collected and paid to the receiver in the original action, and by him distributed to the judgment creditors of the bank. The defendant's property was attached. Thereupon she appeared in this action."

The trial court dismissed the complaint and the Supreme Court affirmed the dismissal on the ground that the property of the stockholder having been found within the jurisdiction of the court either before or after judgment in the original action, (*Harper* v. *Carroll*,) a separate suit against her to reach the property was neither necessary nor proper, for it could be attached or sequestered in the original action.

It was contended by the defendant in the *Hanson* v. *Davison* case that as there had been a former action, (*Harper* v. *Carroll*,) brought for the purpose of enforcing the liability of the stockholders, which action was, as prescribed by the statute, the exclusive remedy, that no further suit could be maintained. The court in commenting upon the contention said that if it were correct, then as the court could only acquire jurisdiction of the resident stockholders in a corporation, all non-resident stockholders

would have absolute immunity from such liability, while their associates who happened to be within the jurisdiction of the court would have to respond to the last cent of their liability. Continuing, the court said:

"Inequitable as such a conclusion would be, still it must be admitted that there are expressions in the opinion in the case of *Allen* v. *Walsh*, (25 Minn. 543,) relied upon by the defendant, which, if taken literally, and without reference to the actual point decided by the court, justify the contention. A decision upon this claim of the defendant involves a consideration of the nature of the liability of stockholders for the debts of the corporation, the method of enforcing it, and just what was decided by the case of *Allen* v. *Walsh*. In that case, which was an action at law by a creditor, for his sole and exclusive benefit, against a single stockholder, to enforce his individual liability, it was correctly held that the action could not be maintained, and that the plaintiff's remedy was an equitable action, in behalf of himself and all other creditors, against the corporation and its stockholders, wherein the debts of the corporation must be determined, and, after exhausting the corporate assets, the liability of stockholders for the deficiency might be adjudicated and enforced pursuant to the provisions of G. S. 1878, c. 76, (G. S. 1894, c. 76.) It was not, however, decided in that case that, if a stockholder was omitted from such original action because the court could not acquire jurisdiction of him, or for any other cause, the liability could not be subsequently enforced against him by bringing him or his property into the original action, if found within the jurisdiction of the court, or by proceeding against him alone in an action ancillary to the original action in any other jurisdiction where he might be found, if the comity of the sister State would permit it."

The particular attention of the court was directed to the objection that but one action could ever be maintained against the stockholders over whom the court had jurisdiction, who must all be joined therein, and that the rest could not thereafter be made liable. The action it will be noticed was not brought by a receiver, the plaintiff in the action being a creditor of the corporation, and no question arose in regard to the right of a receiver appointed under chapter 76 to maintain an action either inside or outside the State to enforce the liability of stockholders to the creditors of an insolvent corporation. Whatever was said in the opinion regarding the possible right of a receiver to maintain such an action as the one now before us was not necessary to the decision of the case, and cannot be regarded as overruling the prior cases.

The opinions in the *Minneapolis Baseball Company* v. *Bank*, (66 Minn. 441,) and in *Hanson* v. *Davison*, (73 Minn. 454,) were written by the same judge, and in the latter case he does not refer to the earlier one decided but two years before, and which held that a receiver, under the State statute, could not maintain such an action as this. There was a strong dissent by Mr. Justice Canty from the remarks of the Chief Justice, as to the right of the receiver to maintain an action in a foreign State. Referring to the earlier cases, he said:

"This court has several times held that a receiver appointed under chapter 76 has no authority to enforce the stockholders' superadded liability. See *Minneapolis Baseball Company* v. *City Bank*, (66 Minn. 441;) *Palmer* v. *Bank*, (65 Minn. 90.) I am unable to see how this court can lay down a rule or edict to govern proceedings in courts of other States, contrary to the rule it lays down to govern proceedings in the courts of this State."

We can ourselves see the difficulty in holding that such an action may be maintained by the receiver in a foreign jurisdiction, while at the same time holding that such receiver could not maintain a like action in the Minnesota courts. If a receiver cannot maintain this kind of an action in the courts of his own State, because its statute provides another in the name of a creditor, or permits it only after the performance of conditions precedent which he has not performed, he cannot, although appointed in the State, maintain such action in a foreign jurisdiction. This we have decided at this term in *Evans* v. *Nellis*, *ante*, p. ——. In that case it was said the receiver was appointed under the statute of that State of 1868 or 1899. It was shown that the act of 1868 made the stockholder liable to the creditor, and that the receiver could not maintain the action thereunder. It also appeared that under the statute of 1899, which made the stockholder's liability an asset of the corporation, to be collected by the receiver, no such action could be maintained except by complying with the statute, and as the receiver had not done so, it was held he could not maintain the action outside the State.

This would seemingly be enough to compel the affirmance of the judgment herein, when we see that the Minnesota Supreme Court has held that a receiver cannot maintain such an action as this in the courts of that State.

An examination of the opinion of the Chief Justice, however, in the *Hanson* v. *Davison* case, shows that it is not based upon the proposition that such an action is provided for by the Minnesota statute, but that the statute failed to say anything forbidding it, and this failure the judge thought left the matter open to the general rules governing in such cases, for he says, at page 461:

"The remedy for enforcing the liability must, in the first instance, from the nature of the liability, be an equitable action. G. S. 1878, c. 76, (G. S. 1894, c. 76,) indicates and regulates to some extent the remedy, leaving to the court the duty of making the remedy effectual by an application of the principles of equitable procedure. This statute prescribes the exclusive remedy only to the extent that an equitable action of the character therein indicated must be first instituted for the enforcement of the liability of stockholders. Such an action, though provided by statute, is essentially an equitable proceeding; and the rules of equity are to be followed, unless inconsistent with the statute. If chapter 76 were repealed, equity would find an adequate remedy for the enforcement of the liability. . . . There is nothing in the statute which justifies the conclusion that, if a

stockholder's liability is not enforced in the original action because he is a non-resident, an ancillary action may not be brought against him alone after the amount for which stockholders are individually liable has been determined in the original action."

This language would seem to indicate that there is nothing in the statute which prevents a receiver from maintaining an action in a foreign State. There is no holding that the statute itself provides in terms for such an action or empowers a receiver to maintain it, or that it transfers any title in the fund to him. We should not, therefore, be justified in following the remarks made in this case, in opposition to those cases which had already been decided by the same court years before and up to and including the *Minneapolis Baseball Company* v. *Bank*, (*supra*,) especially when it appears, as in this case, that all the facts had occurred prior to the declaration of the Chief Justice of the court. The suit now before us was commenced in November, 1898. The corporation failed in May, 1893, and in November of that year proceedings were commenced in Minnesota, which ended in the final decree in 1897, months prior to the last decision, July 26, 1898.

It seems also entirely clear that the receiver provided for in section 5906 of above quoted statute, while not the receiver mentioned in section 5897, is yet simply one to be appointed in aid of the court to work out the provisions of the section, if the court choose to appoint him, and by section 5907, the court, if it appear that the corporation is insolvent, may proceed, without appointing any receiver, to ascertain and enforce the liabilities of stockholders in the creditors' action. The receiver, if he be appointed, is not given power to represent the creditors or to maintain, as representative owner or trustee, an action, inside or outside the State, to enforce the liability spoken of. That is the right of the creditors themselves, and the statute provides for their action against the stockholders.

Assuming the contractual character of the subscription to the stock of the corporation, the right of the receiver to maintain this suit is not thereby made plainer. The contract may have been to pay, in the event of its insolvency, to the creditors of the corporation the amount for which the shareholder might be liable up to the par value of his stock. That was a contract in behalf of the creditor, with which the corporation had nothing to do, and the statute did not make this liability assets of the corporation or confer upon any receiver appointed in the case the right to proceed to enforce it. The cases of *Whitman* v. *Oxford National Bank*, (176 U. S. 559,) and *Hancock National Bank* v. *Farnum*, (176 Id. 640,) do not bear upon the question, as the plaintiff in each case was a creditor of the corporation.

We are of opinion, following the decisions of the highest court of Minnesota, that the statutes of that State do not provide for the appointment of a

receiver to recover as such the amount of the added liability of the non-resident shareholders to creditors of an insolvent corporation. They do not provide that such liability shall be assets of the corporation, to be recovered by the receiver and payable to its creditors when such liability is enforced and the money recovered. There is no transfer of any right or title to a receiver to enforce the liability (certainly not as to non-resident stockholders,) nor is it a case where any assignment of such right by the creditors has been made, so that the receiver is, in fact, an assignee of the persons interested in the recovery from the stockholders.

We are thus brought to the fact that this is a plain and simple case of the appointment, authorized by statute, of a receiver by a court of equity in the exercise of its general jurisdiction as such court, with no title to the fund in him, and where such receiver acts simply as the arm of the court without any other right or title, and the question is whether, in these circumstances, a receiver can maintain this suit in equity in a foreign State by virtue of his appointment, and the direction to sue contained in the decree in the case in which he was appointed a receiver? We pursue the subject after the decision of *Evans* v. *Nellis*, (*supra*,) only because of the argument made by counsel for appellant, that such a receiver as in this case, is not prevented by the statute or decisions of Minnesota from maintaining such an action as this, and that if the statute do not prevent it, he may maintain an action of this nature notwithstanding the former decision of this court in *Booth* v. *Clark*, (17 How. 322,) which it is claimed has been, if not overruled, at least shaken in principle by the decisions as to the comity which is said to prevail among the different States, to permit such an action by a receiver, outside the jurisdiction of the State of his appointment. We do not think anything has been said or decided in this court which destroys or limits the controlling authority of that case.

It was there held that an ordinary receiver could not sue in a foreign jurisdiction, and an elaborate examination was made by Mr. Justice Wayne of the principles upon which the decision was founded. In speaking of the right of a receiver, appointed under a creditors' bill in New York, to bring an action in a foreign State, it was said, in the course of the opinion, as to such a receiver, "whether appointed as this receiver was, under the statute of New York, or under the rules and practice of chancery, as they may be, his official relations to the court are the same. A statute appointment neither enlarges nor diminishes the limitation upon his action. His responsibilities are unaltered. Under either kind of appointment, he has at most only a passive capacity in the most important part of what it may be necessary for him to do, until it has been called by the direction of the court into ability to act. He has no extra-territorial power of official action; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the

debtor's property; none which can give him, upon the principle of comity, a privilege to sue in a foreign court of another jurisdiction, as the judgment creditor himself might have done, where his debtor may be amenable to the tribunal which the creditor may seek." This statement has not been overruled or explained away by any subsequent decision of this court to which our attention has been called.

In *Relfe* v. *Rundle*, (103 U. S. 222,) it was held that a final decree dissolving an insolvent life insurance company of Missouri and vesting, as provided by the statutes in force, for the use and benefit of creditors and policy holders, the entire property of the company in the superintendent of the insurance department of the State, made him the statutory successor of the corporation for the purpose of winding up its affairs; as such he represented the corporation at all times and places in all matters connected with its trust; he was the successor of the State, and represented the State in its sovereignty, and as his authority did not come from the decree of the court, but from the statutes, he was in fact the corporation itself for the purpose mentioned. The superintendent of insurance, being the successor of the corporation, had the right to represent it, and he became a party to the suit commenced against it in Louisiana, and, being a citizen of Missouri, and appearing in time, had the right to remove the case into the United States court. The suit had been commenced against the company in Louisiana, and it having been dissolved by the decree of a court of competent jurisdiction, it was dead, and if the representative appointed pursuant to the laws of the State and holding the title to the property could not be substituted in place of the original defendant it would follow that no defense could be made by any one. The case is no authority for the maintenance of this action.

In *Hawkins* v. *Glenn*, (131 U. S. 319,) Glenn was the trustee of the corporation, which by its deed assigned and transferred to three trustees, for whom he was afterwards substituted, all the property and effects of the corporation, in trust, for the payment of its debts. Glenn subsequently brought a suit in another jurisdiction against a stockholder, Hawkins. The right of Glenn was through an assignment, and he derived title to the property and to the rights of the corporation through a deed. No question was decided in that case which is material to be here considered.

There has been some contrariety of opinion in the lower Federal courts in regard to the right of a receiver, situated as the complainant is in this suit, to maintain an action outside of the State of his appointment. In *Hazard* v. *Durant*, (19 Fed. Rep. 471,) in the Circuit Court, District of Massachusetts, before Judges Lowell and Nelson, it was held that a receiver appointed in one jurisdiction to take charge of a fund cannot sue in another in his own name, though expressly authorized by the decree to maintain actions in his own name.

In *Hale* v. *Hardon*, (89 Fed. Rep. 283,) Putnam, Circuit Judge, held that the plaintiff as receiver, appointed in Minnesota, who had commenced an action at law in the Federal Circuit Court in Massachusetts to enforce the liability of a stockholder in this same corporation of Minnesota, could not maintain such action in another jurisdiction from that in which he was appointed. That judgment was reversed by the Circuit Court of Appeals in 95 Fed. Rep. 747, in which District Judge Aldrich delivered the opinion, which was concurred in by District Judge Webb, while Circuit Judge Colt delivered a dissenting opinion. The judges were thus divided, two district judges in favor of the right of the plaintiff to maintain the action, and the two circuit judges denying it.

In *Hilliker* v. *Hale*, (117 Fed. Rep. 224,) the right of such receiver to maintain his action in a foreign jurisdiction was denied by the Circuit Court of Appeals of the Second Circuit.

In *Wigton* v. *Bosler*, (102 Fed. Rep. 70, 73,) Dallas, one of the Circuit Judges of the Third Circuit, took the same view as Colt and Putnam, Circuit Judges, in 89 and 95 Fed. Rep., and made a decree in accordance with such views.

In *Hale* v. *Tyler*, (104 Fed. Rep. 757,) Judge Putnam, regarding himself bound by the decision of the Circuit Court of Appeals in his own circuit in *Hale* v. *Hardon*, (*supra*,) follows the authority of that case, but he added some further views to show that the receiver in *Hale* v. *Hardon* was constituted such under the general equity powers of the court, and merely as its hand to assist it in realizing rights of action which vested, not in the receiver, but in the creditors. He referred also to the case of *Hayward* v. *Leeson*, decided by the Supreme Judicial Court of Massachusetts, June 15, 1900, and reported in 176 Mass. 310, in which that court held that as none of the proceedings in Tennessee operated as an assignment to the receiver of the choses in action in litigation in Massachusetts, and as the utmost effect of the appointment of a receiver is to put property into his custody as an officer of the court, but not to change the title, nor even the right of possession, the receiver could not sue in his own name in Massachusetts.

The question of comity cannot avail in a case where the courts of the State in which the receiver was appointed hold that an action similar to the one brought in the foreign jurisdiction cannot be maintained by him in the courts of the State of his appointment.

Second. The other ground of demurrer is that whatever remedy may exist in favor of the complainant is at law, and that no case is made which gives a court of equity jurisdiction.

It appears from the bill and the record annexed to and forming a part thereof that there were in all somewhere about five hundred stockholders of the loan company, twenty-three of whom, living in Minnesota, had been

made parties to the Rogers creditors' suit, and judgments had been obtained against them in that suit. Forty-seven of the remainder resided in Pennsylvania and were made parties to this suit, and the balance lived in different States. The indebtedness of the corporation was so great that the liability of the stockholders was up to the full amount imposed by the statutes of Minnesota. The theory of the bill was that the Minnesota decree was conclusive (even upon non-resident stockholders not served with process and not appearing in that suit,) as to the amount of the indebtedness of the corporation and the amount of its assets, thereby concluding the parties as to the necessity of a resort to the stockholders' liability in favor of creditors, leaving open the question of the special liability of each particular shareholder, and whether, if once liable, his liability had ceased wholly or partly by reason of facts pertaining to such stockholder. No accounting was asked for, but simply a judgment against each stockholder for the amount of the par value of his stock.

The jurisdiction of a court of equity over the subject matter is placed by the complainant upon the two grounds, among others, that to sustain such jurisdiction prevents a multiplicity of suits, and also that this suit is an ancillary or auxiliary proceeding brought in aid of and to enforce an equitable decree of another court.

1. Upon the first ground, the cases are various in which the court has either taken or refused jurisdiction, but one cannot adduce from them a plain and uniform rule by which to determine the question. The application of the principles upon which jurisdiction has been suggested or denied has been various, both in England and in this country, and it is difficult, if not impossible, to reconcile the cases. The subject is discussed at length in 1 Pomeroy's Equity Jurisprudence, 2d ed. p. 318, sec. 243 *et seq.* It is therein shown that the foundation of the jurisdiction, or perhaps the earliest exercise of it upon this ground, was in so-called "bills of peace," where in one class of such bills the suit was brought to establish a general right between a single party and numerous other persons claiming distinct and individual interests; the second class being where the complainant sought to quiet his title and possession of land and to prevent the bringing of repeated actions of ejectment against him. The ground was, that the title could never be finally established by indefinite repetitions of such legal actions. And again the question has arisen whether the defendants in a suit by one complainant to establish his right against them all must be connected by some kind of privity among themselves, or can they hold their rights wholly separate and distinct from each other. The question has been answered differently by different courts, and while assuming that there was not always a necessity to show a common interest or privity between the members of the same class of defendants, the courts have also differed in regard to the jurisdiction of a court of equity in particular

cases, even upon such assumption. Numerous cases are cited by Mr. Pomeroy, showing both sides of this question. In any case where the facts bring it within the possible jurisdiction of the court, according to the view taken by it in regard to such facts, the decision must depend largely upon the question of the reasonable convenience of the remedy, its effectiveness and the inadequacy of the remedy at law. To sustain the right to bring the suit where the separate defendants have no privity among themselves, two early and leading cases in the English courts are cited, viz: *City of London* v. *Perkins,* (3 Brown's Parl. Cas. Toml. ed. 602, decided in 1734,) and *Mayor of York* v. *Pilkington,* (1 Atk. 282, decided in 1737.)

In the first case the city claimed to be entitled to and that it had received, time out of mind, from all masters of ships bringing cheese eastward of London Bridge to the port of London to be sold, a certain duty per ton on such cheese. The defendants, being great importers of cheese, refused to pay the duty, and it was shown by the complainant that the right of the city had been proven at law in other cases, and a verdict given for the city in favor of its right, and the city therefore claimed there was no reason why the question should be sent to law to be tried over again. The real point decided in the case was that depositions of witnesses taken in former causes relating to the same matter for which a new suit is instituted against another party ought to be permitted to be read as evidence upon the hearing of such new cause, although the witnesses themselves are not proved to be dead. The depositions being regarded as proper evidence, and the right at law having been maintained, the judgment was for the recovery of the toll.

The second case was a bill filed by the mayor of York, who claimed in behalf of the city to have been in possession of a fishery in the river Ouse, the city claiming the sole right of fishery, and the court held that the mayor might bring a bill to be quieted in the possession, although he had not established his right at law, and that it was no objection upon a demurrer to such bill that the defendants had distinct rights, for upon an issue to try the general right they may at law take advantage of their several objections and distinct rights. The bill is described as a "bill of peace," and it is assumed that there would be an issue sent to a court of law for trial as to the sole right of the complainant and where the defendants might show their distinct rights. The Lord Chancellor said:

"Here are two causes of demurrer, one assigned originally and one now at the bar, that this is not a proper bill, as it claims a sole right of fishery against five lords of manors, because they ought to be considered as distinct trespassers, and that there is no general right that can be established against them, nor any privity between the plaintiff and them. . . . But there are cases where bills of peace have been brought, though there has been a general right claimed by the plaintiff, and yet no privity between the plaintiff and defendants, nor any general right on the part of

the defendants, and where many more might be concerned than those brought before the court. . . . I think, therefore, this bill is proper, and the more so, because it appears there are no other persons but the defendants who set up any claim against the plaintiffs, and it is no objection that they have separate defenses; but the question is whether the plaintiffs have a general right to the sole fishery, which extends to all the defendants; for notwithstanding the general right is tried and established, the defendants may take advantage of their several exemptions, or distinct rights."

The demurrer was therefore overruled.

On the other hand, in *Bouverie* v. *Prentice*, (1 Brown's Ch. Rep. 200, decided in 1783,) it was held that a bill would not lie against several tenants of a manor for quit-rents, the plaintiff's remedy being at law, and the suit also multifarious as to the different tenants. The Lord Chancellor said:

"Upon what principle two different tenants, of distinct estates, should be brought hither to hear each other's rights discussed, I cannot conceive. The court has gone great lengths in bills of this sort, and taking the authority for granted, I cannot conceive on what ground such a suit can stand."

The Chancellor also remarked that where a number of persons claimed one right in one subject, such a bill may be entertained to put an end to litigation. Here no one issue could have tried the cause between any two of the parties. See also *Ward* v. *The Duke of Northumberland*, (2 Ans. 469, decided in the Exchequer in 1794.) The court in that case held that the suit could not be maintained in equity on the ground of preventing a multiplicity of suits where the demands against each of the defendants, although of the same nature, were entirely distinct from and unconnected with any other defendant. In such case each defendant had a right to object to the joining of any distinct and unconnected causes of action.

To the same effect is *Birkley* v. *Presgrave*, (1 East, 220, 227, decided in the King's Bench in 1801.) In that case the court said:

"But generally speaking, a court of equity will not take cognizance of distinct and separate claims of different persons in one suit, though standing in the same relative situation."

In *Weale* v. *West-Middlesex Waterworks*, (1 Jac. & Walk. Ch. Rep. 358, decided in 1820,) the Lord Chancellor, in holding that the suit would not lie, referred to the case of the *Mayor of York* v. *Pilkington*, and said:

"For where the plaintiffs stated themselves to have the exclusive right, it signified nothing what particular rights might be set up against them; because, if they prevailed, the rights of no other persons could stand; and it has long been settled, that if any person has a common right against a great many of the King's subjects, inasmuch as he cannot contend with all the King's subjects, a court of equity will permit him to file a bill against some of them; taking care to bring so many persons before the court, that

their interests shall be such as to lead to a fair and honest support of the public interest; and when a decree has been obtained, then, with respect to the individuals whose interest is so fully and honestly established, the court, on the footing of the former decree, will carry the benefit of it into execution against other individuals who were not parties."

In *Marselis* v. *The Morris Canal &c. Company,* (1 N. J. Eq. 31, decided in 1830,) it was held that the plaintiff could not maintain an action against several defendants to recover matters of different natures against them. It was a suit in equity by several land owners of different lands not coming under a common title, against the defendant for taking their lands for the purposes of its incorporation, and not paying or compensating the owners therefor. It was alleged that the company was insolvent, and it was prayed that an account might be taken and damages awarded to the complainants for the injuries already sustained, and for compensation, and an injunction restraining the company from occupying the land was asked for. The court held the bill could not be maintained, as the same was multifarious, and said the fact that the plaintiffs had a common interest in the question and that to sustain the jurisdiction would relieve the necessity of a number of suits at law brought by the separate plaintiffs, would not confer jurisdiction on the court upon any principle of equity.

In *Demarest* v. *Keefe,* (34 N. J. Eq. 469, decided in 1881,) several persons, owning distinct parcels of land or occupying different dwellings and having no common interest, sought to restrain a nuisance in consequence of the special injury done to each particular property, and it was held that each must bring a separate suit and obtain relief, if at all, upon his own special wrong. It was said that several persons might join to restrain a nuisance which is common to all and affects each in the same way, instancing slaughter-houses in a populous part of the town and the offensive and deleterious odors there generated being allowed to diffuse themselves throughout the neighborhood. In such case all injuriously affected by them may join in the same suit, for in such a case the injury is a common one, and the object of the suit is to give protection to each suitor in the enjoyment of a common right. To the same effect is *Rowbotham* v. *Jones,* (47 N. J. Eq. 337, decided in 1890.)

Then there were cases arising by reason of the so-called *Schuyler frauds,* such as *New York & New Haven R. R. Company* v. *Schuyler,* (17 N. Y. 592, 602, on demurrer, decided in 1858; again reported on appeal from the judgment on the merits, in 34 Id. 30, decided in 1865.) These were very complicated questions arising by reason of the frauds referred to, and jurisdiction was maintained upon what might be termed general principles of necessity for the purpose of quieting what would otherwise have been endless litigation, and as stated by Davis, J., in 34 N. Y., the case was not decided upon any one head of equity jurisdiction.

In *Railroad Company* v. *Mayor &c.*, (54 N. Y. 159,) defendants had commenced seventy-seven actions to recover penalties for violation of a city ordinance. The company commenced this action to restrain their prosecution until the right could be determined in one of the actions, and the suit was maintained on the ground of thereby preventing vexatious litigation in a multiplicity of suits.

In *Supervisors* v. *Deyoe*, (77 N. Y. 219,) questions of the indebtedness of the county upon certain certificates wrongfully issued by its treasurer were complicated with questions of the liability of the county to various holders of the certificates, and the court held a suit in equity could be sustained, making all the holders of the different certificates parties, because a multiplicity of suits would thereby be avoided and the whole question more conveniently and properly disposed of, all the defendants having in fact a common interest.

In *Meyer* v. *Phillips*, (97 N. Y. 485,) the suit was sustained as one to quiet the title of plaintiff, the acts threatened by various defendants being under a claim of right, and being of exactly the same nature, the issue being the same in all.

Cases in sufficient number have been cited to show how divergent are the decisions on the question of jurisdiction. It is easy to say it rests upon the prevention of a multiplicity of suits, but to say whether a particular case comes within the principle is sometimes a much more difficult task. Each case, if not brought directly within the principle of some preceding case, must, as we think, be decided upon its own merits and upon a survey of the real and substantial convenience of all parties, the adequacy of the legal remedy, the situations of the different parties, the points to be contested and the result which would follow if jurisdiction should be assumed or denied; these various matters being factors to be taken into consideration upon the question of equitable jurisdiction on this ground, and whether within reasonable and fair grounds the suit is calculated to be in truth one which will practically prevent a multiplicity of litigation and will be an actual convenience to all parties, and will not unreasonably overlook or obstruct the material interests of any. The single fact that a multiplicity of suits may be prevented by this assumption of jurisdiction is not in all cases enough to sustain it. It might be that the exercise of equitable jurisdiction on this ground, while preventing a formal multiplicity of suits, would nevertheless be attended with more and deeper inconvenience to the defendants than would be compensated for by the convenience of a single plaintiff, and where the case is not covered by any controlling precedent the inconvenience might constitute good ground for denying jurisdiction.

We are not disposed to deny that jurisdiction on the ground of preventing a multiplicity of suits may be exercised in many cases in behalf of a single complainant against a number of defendants, although there is

no common title nor community of right or interest in the subject matter among such defendants, but where there is a community of interest among them in the questions of law and fact involved in the general controversy.

Is there, upon the complainant's theory of this case, any such common interest among these defendants as to the questions of fact that may be put in issue between them and the plaintiff? Each defendant's defense may, and in all probability will, depend upon totally different facts, upon distinct and particular contracts, made at different times, and in establishing a defense, even of like character, different witnesses would probably be required for each defendant, and no defendant has any interest with another.

In this case, from the complainant's own bill, the amount demanded is the full amount of the par value of the shares held by each defendant. In *Kennedy* v. *Gibson*, (8 Wall. 498, 505,) a receiver brought suit to recover from the stockholders of an insolvent national bank the statutory liability imposed upon them, and in the course of the opinion it was stated by the court:

"Where the whole amount is sought to be recovered, the proceeding must be at law. Where less is required, the proceeding may be in equity, and in such a case an interlocutory decree may be taken for contribution and the case may stand over for the further action of the court, if such action should subsequently prove to be necessary, until the full amount of the liability is exhausted."

In *Bailey* v. *Tillinghast*, (46 C. C. A. 93; 99 Fed. Rep. 801,) this statement of the law was recognized, and the cases of *Casey* v. *Galli*, (94 U. S. 673,) and *United States* v. *Knox*, (102 Id. 422,) were referred to as recognizing the same rule. In *United States* v. *Knox*, the court approved and reaffirmed the rule laid down in *Kennedy* v. *Gibson*, and one of those rules was that when the whole amount was sought to be recovered, the proceeding must be at law.

The facts surrounding the present case and the reasons for holding that they do not bring it within the principle of preventing a multiplicity of suits are so well stated in the opinion of McPherson, District Judge, in this case, (102 Fed. Rep. 790,) that we quote the same. After speaking of the alleged conclusiveness of the Minnesota decree upon the question therein decided, the judge continued:

"Thereafter a different question arose for determination, namely, can the assessment be lawfully enforced against the individuals charged therewith? And in this question the interest of each stockholder is separate and distinct. The bill asserts the conclusiveness of the Minnesota decree upon the defendants, so far as the necessity for the assessment and the amount charged against each stockholder are concerned. (*Bank* v. *Farnum*, 20 Sup. Ct. 506, Adv. S. U. S. 506, 44 L. ed., 176 U. S. 640.) Assuming that position to be sound (and, if I do not so assume it; if these questions are still open for determination, so far as the Pennsylvania stockholders are to be

affected—the bill must fail for want of necessary parties,) it is clear that only two classes of questions remain to be decided: The first is whether a given stockholder was ever liable as such; and the second is whether, if he were originally liable, his liability has ceased, either in whole or in part. Manifestly, as it seems to me, the defendants have no common interest in these questions, or in the relief sought by the receiver against each defendant. The receiver's cause of action against each defendant is, no doubt, similar to his cause of action against every other, but this is only part of the matter. The real issue, the actual dispute, can only be known after each defendant has set up his defense, and defenses may vary so widely that no two controversies may be exactly or even nearly alike. If, as is sure to happen, differing defenses are put in by different defendants, the bill evidently becomes a single proceeding only in name. In reality it is a congeries of suits with little relation to each other, except there is a common plaintiff, who has similar claims against many persons. But as each of these persons become liable, if at all, by reason of a contract entered into by himself alone, with the making of which his co-defendants had nothing whatever to do, so he continues to be liable, if at all, because himself, and not they, had done nothing to discharge the liability. Suppose A to aver that his signature to the subscription list was a forgery; what connection has that averment with B's contention, that his subscription was made by an agent who had exceeded his powers? or with C's defense, that his subscription was obtained by fraudulent representations; or with D's defense, that he has discharged his full liability by a voluntary payment to the receiver himself? or with E's defense, that he has paid to a creditor of the corporation a larger sum than is now demanded? These are separate and individual defenses, having nothing in common; and upon each the defendant setting it up is entitled to a trial by jury, although it may be somewhat troublesome and expensive to award him his constitutional right. But, even if the ground of diminished trouble and expense may sometimes be sufficient, I should still be much inclined to hesitate before I conceded the superiority of the equitable remedy in the present case. Such a bill as is now before the court is certain to be the beginning of a long and expensive litigation. The hearings are sure to be protracted. Several, perhaps many, counsel will no doubt be concerned, whose convenience must be consulted. The testimony will soon grow to be voluminous. The expense of printing will be large. The costs of witnesses will not in any degree be dimished, and, if some docket costs may be escaped, this is probably the only pecuniary advantage to be enjoyed by this one cumbersome bill over separate actions at law."

We are in accord with the views thus expressed, and we therefore must deny the jurisdiction of equity, so far as it is based upon the asserted prevention of a multiplicity of suits.

There remains the further question of maintaining the suit on the ground that it is ancillary or auxiliary to the decree of the Minnesota court and aids in its enforcement. We think this contention cannot be sustained.

In the first place, all the non-resident stockholders were but nominal parties in the Minnesota suit. Their names were merely placed in its title. No service of process was ever made on one of them, and as the suit

was not one in which service by publication of process could be ordered, there was nothing in the nature of the suit to give them notice or to enable the court to give judgment against them without their appearing. The court did not assume to give any such judgment. Indeed, the complainant averred there were no means of obtaining jurisdiction over the non-resident stockholders, and the court assumed that it had no jurisdiction over them, and on account of such lack of jurisdiction it only gave judgment against those resident stockholders who were parties to the suit. The complainant claims that the non-resident stockholders are bound because the corporation was a party, not because they were parties to the suit. There is no decree or judgment, therefore, against the stockholders who were non-residents. The claim that they are bound by certain findings of fact by the court, because of the corporation being a party and in law representing them to that extent, assuming it for this purpose to be well founded, is far from transforming a decree against resident stockholders into one against non-residents who were not parties to the action. Even assuming that the decree concludes them upon certain facts found in that action where there was no decree against them, still, another action in another jurisdiction to enforce their liability as originally created by statute cannot within any reason be said to be one to enforce the former judgment. Indeed it is because of the very fact that no judgment was or could be obtained against the non-resident stockholders in the Minnesota suit that the Pennsylvania Federal court is asked to exercise its jurisdiction and give judgment against the defendants on their statutory liability. This does not make the Pennsylvania suit ancillary to the Minnesota decree for the purpose of enforcing it, for there is no decree against them to be enforced. There is only a claim that they are bound by certain facts found in another action to which they were not parties in any but a merely formal and nominal sense.

We think that, upon grounds discussed herein, the judgments of the courts below were right, and they are, therefore,

Affirmed.

Mr. Justice BREWER dissented.

True copy.

Test:

Clerk Supreme Court, U. S.